S. HRG. 104–136

ENTREPRENEURSHIP IN AMERICA: REDUCING GOVERNMENTAL BURDENS ON SMALL BUSINESS

FIELD HEARING

BEFORE THE

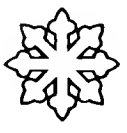
COMMITTEE ON SMALL BUSINESS UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

APRIL 12, 1995

Printed for the use of the Committee on Small Business



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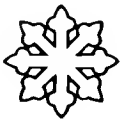

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ENTREPRENEURSHIP IN AMERICA: REDUCING GOVERNMENTAL BURDENS ON SMALL BUSINESS

WEDNESDAY, APRIL 12, 1995

UNITED STATES SENATE,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The committee met, pursuant to notice, at 9:14 a.m., in Westport Room 106, University of Missouri Kansas City, Kansas City, Missouri, the Honorable Christopher S. Bond (chairman of the committee) presiding.

Present: Senator Bond.

OPENING STATEMENT OF THE HONORABLE CHRISTOPHER S. BOND, CHAIRMAN, COMMITTEE ON SMALL BUSINESS, AND A UNITED STATES SENATOR FROM MISSOURI

Chairman BOND. This hearing of the United States Senate Committee on Small Business will come to order. It is a pleasure to be here in Kansas City for one of a series of Small Business Committee hearings we are holding around the country on "Entrepreneurship in America."

As the Chairman of the Senate Committee on Small Business, I have begun this series of public hearings to get the views and comments of small business owners to guide us in Congress as we rethink how government can best serve small business. Congress has to take responsibility for encouraging entrepreneurship and making sure the federal government does not stifle the small and growing business sector that will provide tomorrow's innovative products and new jobs.

As voters, you were among a nationwide group who made it clear last November that they are fed up with government inefficiency, wasteful spending and excessive regulation. I view the call for change as a positive challenge that was issued to all of us in government—a challenge to target our resources wisely and increase our careful oversight of federal activities.

At the same time people still want to be able to rely on government to provide essential national and community functions. We all want to have clean water to drink, safe and effective medicines to take, and safe food to eat. People are not suggesting that we should have a society with no rules, but they are clearly insisting that government be brought under control. They are tired of looking at how government runs and thinking to themselves, "you could never run a business that way."

Government regulation costs individuals and businesses more than 600 billion dollars annually, almost $6,000 for each family in America. According to the Small Business Administration, small businesses spend one billion hours simply filling out government paperwork. Counting the indirect costs to our economy—lost productivity, fewer jobs and missed business opportunities—puts the regulatory price tag between 810 billion and 1.7 trillion dollars annually. This hidden tax on our economy is mind boggling when you consider that it equals or exceeds total federal tax collections of one trillion dollars in 1992.

The current regulatory environment creates many roadblocks for running a good business. Burdensome government regulation too often strangles the very small and growing companies that should be igniting our nation's economy. Our new Congress is working to streamline government and get government off your backs. Majority Leader Dole has appointed me Co-Chair of the Senate Regulatory Relief Task Force, and our Task Force has targeted for reform a number of areas and federal activities.

The burden of government regulation falls most heavily on small businesses, so the Small Business Committee's work will focus on reducing these burdens. This is not a quick fix, but we have already taken several significant steps in this direction.

I have cosponsored the Paperwork Reduction Act of 1995. It passed the Senate 99 to nothing and awaits the President's signature. The bill sets a government-wide goal to reduce paperwork by 10 percent this year and the next, followed by further annual reductions of five percent.

I also introduced the Regulatory Flexibility Amendments Act of 1995 to provide small businesses with the additional weapon of court enforcement to make sure that federal agencies are complying with their obligations to consider the impact of new regulations on small business. Congress passed a law in 1980 saying that the regulatory agencies need to determine the impact on small business, but it also included a clause saying there would be no judicial enforcement. Not surprisingly, many of the federal agencies have thumbed their noses at small business and the Small Business Chief Counsel for Advocacy when somebody tried to raise the question of looking at the impact on small business.

I have also cosponsored and am working with Senator Dole on his Comprehensive Regulatory Reform Act. The bill would require that all new regulations undergo risk assessment and cost-benefit analysis to ensure the benefits of a new rule outweigh its cost.

Finally, I cosponsored with Senator Nickles the Regulatory Oversight Act. That bill, which passed the Senate a hundred to nothing, provides a 45-day window for Congress to reject excessively burdensome new government regulations before they go into effect. This, frankly, is re-emphasizing the too often overlooked responsibility of Congress to exercise oversight. We pass the laws that authorize the regulations, but too frequently we do not hold the regulating agency's feet to the fire and make sure that the regulations are appropriate and no broader than necessary.

As Chairman of this Committee I am going to continue to look for other ways to relieve small business owners of excessive government burdens. We want to find ways to help the flow of start-up

and expansion capital to small businesses and new growth companies, and to make it easier for companies to export their products, services and ideas in the global economy.

I am very excited about the opportunities we have today to improve the quality of life and the opportunities for growing businesses, and your input in this process is really important. I have learned throughout my experience that the best ideas and the best target for actions come from the people here in the field, not from the professionals in Washington. Again, my sincere thanks to all of you who have come to testify and those who have come to listen. I look forward to hearing your views and comments so we can find ways to work together to foster the spirit of Entrepreneurship in America.

Now, normally, when we have these hearings we have a little timer that goes off and beeps at the end of about five minutes. Today we do not have a timer, but I am sure that you all have your own sense of timing. I would like to invite you to try to contain your comments to about five minutes. The full written statements that you have submitted will be made part of the record, and we will have those available to all committee and staff, and we will have some opportunities for questions if you will try to keep the initial statement to five minutes.

With that, our first panel is Mr. Ernest Isenberg, Chairman of the Western EXTRALITE in Kansas City; Leon Hubbard, a homebuilder with Hubbard Enterprises in Blue Springs; Shirley Potts, President of DLT Transportation Services in Kansas City; and Robert Wheeler, President of Mar-beck in Kansas City. With that, Mr. Isenberg.

STATEMENT OF ERNEST ISENBERG, RETIRED PRESIDENT, WESTERN EXTRALITE COMPANY, KANSAS CITY, MISSOURI

Mr. ISENBERG. Thank you. I am Ernest Isenberg and I am the retired President rather than Chairman of Western EXTRALITE Company.

Chairman BOND. Oh. Excuse me.

Mr. ISENBERG. We are wholesale distributors of electrical supplies. What we request is legislative revision of the OSHA Hazard Communication Standard as it applies to the Material Safety Data forwarding process. Why? Because it fails to provide worker safety as intended by the act, and generates a bunch of paperwork that really is useless in many instances.

Among our customer base, virtually all workers use hazardous products on an intermittent rather than on a continuing basis such as would be on a production line. Regulations require our forwarding the MSDS to the employer-customer at the time of first purchase. If a worker uses a product before the MSDS reaches the employer, what good does the MSDS do? Or if the employer first purchased the product a while back, say eight months or a year ago, how can the worker who has not used it in a while possibly remember the important things? (See List of OSHA Hazardous Products Currently Stocked by Western EXTRALITE Company and a sample MSDS of a 3M Brand Kit 82–A1). There are ingredients, exposure limits, health and hazard data, all kinds of things. How can a person remember this when they use it on an intermittent basis

even though they may have, at one time or another, been trained in it?

Much of the information in here is of a rather esoteric nature that someone trained in chemistry or toxicology can understand, but it is Greek to the average layman.

Currently our yearly costs of staying in compliance with the forwarding process amount to 17.6 percent of the revenues generated by the sale of these products. A typical electrical distributor, his gross margin, that is the sell price less cost, amounts to 19.25 percent. We spend 17.6, so for about 2.4 percent we are supposed to do everything else. It is a sure loser.

I am not here to cry about the cost. The reason we are here is to ask for a change because it is not doing what it is supposed to do: provide worker safety and, at the same time, eliminate some unnecessary paperwork. There is a solution. We have proposed this since the late '80s at various OSHA hearings in person or through trade associations, National Association of Electrical Distributors, National Association of Wholesalers, and have not gotten to first base.

The Department of Transportation, DOT, has a program called HazMat, Hazardous Material Standard, and it assigns each product its own code number plus—on the label there is this code number plus a telephone number that is attended 24 hours a day, seven days a week. The Material Safety Data Sheet itself is sent to a central repository. In this particular case it is an outfit called Chemtrec. In 1991 they had over 550,000 Material Safety Data Sheets on file. In the case of an accident the injured worker can either call that number or, if there is a firstaid provider, ambulance driver, fireman, a caller gets very specific information, the nature of the chemical involved and how to treat it. The same thing for emergency personnel at hospitals.

Our written comment is about nine pages long. It details some of the other things that can be done to put this into effect, training, et cetera. So in conclusion I would like to say that the Hazard Communications Standard has a very laudable objective. Our proposals, when adopted, will enhance worker safety and eliminate useless paperwork. It is a win-win situation. We request your efforts to change the regulation. Thank you very much.

[The prepared statement of Mr. Isenberg follows:]

Western EXTRALITE Company
DISTRIBUTORS OF QUALITY ELECTRICAL PRODUCTS
1470 Liberty Street ● Kansas City, Missouri 64102 ● (816) 421-8404 ● FAX (816) 421-6211

April 12, 1995

REQUEST FOR LEGISLATIVE REVISION OF
OSHA HAZARD COMMUNICATION STANDARD
MATERIAL SAFETY DATA SHEET (MSDS) FORWARDING PROCESS
CODE OF FEDERAL REGULATIONS 29 PART 1910.1200

Western EXTRALITE Company is a distributor of electrical supplies. As such, we purchase product, 1) place it on the shelf and reship it when we receive orders for it, or 2) purchase for shipment directly to the customer. We do not repackage chemically hazardous product.

To enhance worker safety, the Material Safety Data Sheet forwarding requirements should be changed. As presently constituted, these leave many workers without access to MSDSs at time of use even though their employers and the employers' suppliers are in compliance. This is true of construction, maintenance, and service personnel who use various hazardous chemicals on an intermittent rather than a continuous basis. Intermittent use, rather than continuous use, is typical of all but a very small number of workers among our customer base.

The present regulations require that we forward MSDSs to the employer at the time of first purchase of a hazardous chemical. If the worker uses the product prior to the MSDS being received by the employer, no matter how well the employer trains the worker, it is an after-the-fact situation, since the MSDS goes to the employer rather than the worker using the product. In our industry, this is a frequent occurrence when a electrician picks up material at our sales counter and takes it to the jobsite for use.

Another problem arises when the manufacturer of the chemically hazardous product changes the configuration, but retains the trade name and catalog number. How are the employer and his worker to know which MSDS applies to the particular package that the worker is currently using? There are other examples where the worker using the chemically hazardous product does not have ready access to the MSDS at the time of use.

Another problem inherent in the present process is the MSDS itself. Most of the information contained therein is so esoteric (see attached example) as to be understood only by professionals trained in chemistry or toxicology. Consequently, there is not much impetus for the worker to retain the little information that can be comprehended, no matter how much training the employer provides. This is particularly true of the vast majority of our employer customers whose workers use chemically hazardous materials on an intermittent basis. For example, an electrician may use a spray can of contact cleaner on a job today and then not use it again for several months. Over a period of a year, the same electrician may use twenty other products, again, on an intermittent basis. It is unrealistic to expect such workers to retain the important precautions outlined in the MSDS on this many products over a longer period of time.

Currently, our yearly costs to place ourselves in compliance with the MSDS forwarding process amounts to 17.61% of the sales revenue generated by products having Material Safety Data Sheets. This compares to 19.25% gross margin for a typical electrical wholesale distributor. In other words, the cost of the MSDS Forwarding process nearly eats up the gross profit. Detailed financial analysis supporting the above is attached.

We have been trying since 1988, in one form or another, to have the OSHA Hazard Communication Standard changed to better meet its goal of worker safety while at the same time help businesses be more productive by eliminating a blizzard of paperwork. Our efforts to-date have been in vain. I hope and urgently request that this Committee will review our proposals outlined below, which are supported by two national trade associations representing the wholesale distribution industries, and through legislative action reform the present regulations. (Copies of previous presentations are attached.)

Request for Legislative Revision of OSHA HCS

To replace the present MSDS forwarding process, we proposed the following:

I. Establish a single respository, e.g. Chemtrec, for manufacturers to send MSDSs and future revisions.

Chemtrec is a separate organization within the Chemical Manufacturers Association. It is supported by more than 7000 companies, and its optical disc storage system contains 550,000 MSDSs. It is manned 24 hours a day. (This data is as of 1991.)

We suggest that this concept by expanded to ten regional offices that align closely to the ten EPA regions and which could be manned 24 hours a day. The single repository would electronically scan MSDSs and transmit them from its central data base to the ten regional offices. A single 800 number listed on the manufacturer's label would route a call to the proper regional office based on the caller's area code mapped to the EPA region. This would eliminate missing MSDSs, misplaced ones, or the possibility of the MSDS reaching the employer after use of the material, plus the multitude of other occurrences inherent in the present system.

An additional benefit would be that the MSDS could by structured to provide detailed specifications, recommendations for safe use of the product, physical hazards etc., all in technical terms for use by professionals and emergency response personnel. And, it would obviate the concern expressed in the Federal Register of 5/17/90, Page 20581, center column, "Issues Related To The Preparation of MSDSs and Labels".

In an emergency, immediate access to detailed chemical specifications is just a phone call away. Such information will permit not only the best and appropriate treatment, but also longer term care if indicated.

II. Each container/product is to bear a WARNING LABEL with these elements:

a. Safe usage, including special use instructions, such as safe disposal.

b. Information needed for first-aid administration.

c. A product identification code.

d. The phone number for the MSDS Hot Line, per above, where complete information may be obtained 7 days a week, 24 hours a day.

The above outlined program is already mandated by the Department of Transportation (DOT) for its Hazardous Material Standard (HAZMAT). The Standard mandates that every HAZMAT product be assigned its own code number independent of its trade name or catalog number, e.g. UN1234, plus an emergency telephone contact number attended 24 hours a day, 7 days a week.

III. IMPACT ON TRAINING REQUIREMENTS:

A. In terms of training, a definite differentiation should be made between the intermittent user and the "frequent-use" worker such as a production line employee whose duties require daily handling or exposure to hazardous chemicals.

For the intermittent user of chemically hazardous products (which is applicable to a very high percentage of employers and their workers), we recommend the following:

Include Warning Label awareness in a "Safe Work Habits" training program of which the use of Hazcom products is one element. Such training should stress:

1. Reading label prior to use.

2. Observing safe use instructions.

3. Keeping product container with Warning Label until task is completed.

4. Place emphasis on the concept that people need to be responsible and accountable for what they do in protecting themselves. (This applies equally to the intermittent user and the worker who uses chemically hazardous product on a continuing basis.)

5. In case of accident, follow first-aid instructions or show label to first-aid provider who then can, if needed, contact MSDS Hot line.

B. For "Production-Line" (non-intermittent) use of chemically hazardous products, we recommend the following:

1. Employer asks supplier of any chemical product for MSDS at time of purchase.

2. Upon receipt of product, receiving department forwards the Product I.D. Code to the person or department responsible for safety programs. (Incoming shipments are presently already marked with warning labels that conform to both DOT and OSHA requirements).

3. Above results in employer having MSDS available for training.

IV. ENHANCEMENTS OF PRODUCT IDENTIFICATION CODE AND PHONE NUMBERS FOR MSDS HOT LINE.

As was suggested earlier, we propose that a NATIONAL product I.D. Code and Hot Line be established. The manufacturer of a chemically hazardous product would supply the I.D. Code and MSDS at the time the product comes to market. Upon reconfiguration of the product, a new I.D. Code and MSDS are given to the single National Repository.

V. BENEFITS AND ADVANTAGES

A. The placement of an I.D. Code on the label of a chemically hazardous product will permit the exact identification of an item's chemical composition. It will eliminate errors due to reconfiguration of an item whose trade name and catalog number may remain unchanged.

B. MSDS information is always only a phone call away at time of use, and at point of use, and need not be hunted for in a jobsite construction shack or a building superintendent's file cabinet.

C. It eliminates the paper blizzard and latent liability inherent in the present system. And it also puts an end to the costly maintenance of MSDS files which are now of only limited value.

D. Due to the very competitive environment in which our manufacturing, distribution, and service-providing (contractor) industries operate today, it won't be very long before the consumer will reap the benefits of our lower operating costs. It will also enable our manufacturers to compete that much better in the global market place.

E. Never least, the development of a single data base will supply various government agencies and private associations with a central source for information.

F. Finally, it leaves little to chance, and protects the worker in a most efficient manner.

VI. Broadly speaking, the "Performance-Oriented" requirements of the current HCS may be suited to chemical manufacturers, but they leave non-packaging distributors, such as ourselves, and their contractor and maintenance repair customer with serious latent liability. Although we at Western EXTRALITE Company make a continuing effort to comply with applicable regulations, things can fall through the cracks, whether through unintentional employee error, or circumstances beyond our control. The enhancements suggested above will eliminate such latent liability.

Request for Legislative Revision of OSHA HCS

OTHER COMMENTS

A. We request that OSHA revise its HCS to state unequivocally that the non-packaging distributor and employer are not responsible for passing on the "appropriateness" of the hazard warning on the "Warning Label", but can rely solely on the information stated on the label. (See Federal Register/ Vol. 52, No. 163/ August 24, 1987, Page 31880, Column 3, (4) (f) (ii).)

B. We request that as an employer who has responsibility under the HCS, we be notified by OSHA of changes that affect us. Surely a way can be found to send us notice in writing of our responsibilities when regulations change.

   Additionally, we should be made aware of the availability of booklets, compliance kits, or similar supplemental aids to HCS compliance.

In conclusion, the OSHA Hazardous Communication Standard, laudable in its objective and for its preventive approach, all too frequently fails to deliver safety to the worker. The suggestions outlined in detail in this presentation are the result of our experience of trying to be in compliance with present requirements. When adopted, they will enhance worker safety as well as employer productivity.

Should you have questions or require further elaboration regarding our suggestions, please contact me.

Request for Legislative Revision of OSHA HCS

Thank you for the opportunity to pass on suggestions for improving the HCS.

Sincerely,

Ernest Isenberg

/bb
Enclosures

Presented to the Senate Small Business Committee Field Hearing, Senator Christopher S. Bond, Chairman at the UMKC University Center, Kansas City, MO, by Ernest Isenberg, Retired President, Western EXTRALITE Company.

Attachments:

1. Western EXTRALITE Company Compliance Costs for OSHA MSDS Forwarding

2. MSDS 3M Brand Kit 82-A1 & List of OSHA Hazardous Products Currently Stocked by Western EXTRALITE Company

3. December 7, 1988 Comments of National Association of Electrical Distributors Before the Occupational Safety and Health Administration on the Notice of Proposed Rulemaking
   [This attachment has been retained in the Committee's files.]
4. June 22, 1989 Statement Before the U.S. Senate Small Business Committee
   [This attachments has been retained in the Committee's files.]
5. August 14, 1990 Comments in Response to OSHA Notice

6. June 28, 1991 Petition By the NAED for Legislative Revision of OSHA HAZARD COMMUNICATION STANDARD - Hand-delivered to Senator John Danforth at Kansas City Westport Allen Center town-hall meeting on 6-30-91.
   [This attachment has been retained in the Committee's files.]

Western EXTRALITE Company

DISTRIBUTORS OF QUALITY ELECTRICAL PRODUCTS

April 12, 1995

COMPLIANCE COSTS FOR MSDS FORWARDING REGULATIONS

In March of 1990, the Company did a bulk mailing of all MSDSs for products in our stock at that time. These sheets were sent to the complete list of customers at that time. The total number of sheets per packet was 27, and the total number of customers was 1748. We tracked the costs involved and they were as follows:

1748 Packets of 27 copies each	$1740.00
1748 Envelopes	$ 218.46
1748 Items of postage	$ 401.71
1748 Labels	$ 284.73
Labor Costs	$ 189.70
Total	$2834.60
Cost per packet,	$1.62

Additional mailings were made both before and after the March 1990 mailing. Based on the above $1.62 cost per packet, total costs are as follows:

January 1988	1397 Packets	$2263.14
May 1988	1476 "	$2391.12
March 1989	1638 "	$2653.56
August 1989	1680 "	$2721.60
March 1990	1748 "	$2834.60
October 1990	1888 "	$3058.56
May 1991	2042 "	$3308.04
March 1992	2421 "	$3922.02
September 1992	2449 "	$3967.38
		$27120.02

Additionally, from 1988 to May 1993, packets were mailed out to all new accounts developed during this period. These numbered 1052 packets with a total cost of $1704.02. This raises our total to $28,824.04.

COMPLIANCE COSTS FOR MSDS FORWARDING REGULATIONS

Effective May 1993, we changed our procedure for handling products that require MSDSs. To insure our requirement of forwarding these sheets to our customers, we made the following changes:

The computer tracks all sales on products sold that require a MSDS. The next day we mail the appropriate listing to the customer's place of business. We developed a listing of customers and which items they buy so we do not duplicate mailings.

Implementation: Each night the computer tracks all sales of MSDS products. With the nightly reports, a new report will list all sales. The next morning we will print the report and mail a copy of the MSDS to the customer's office.

The cost of implementing this system in the computer was approximately $500.00 and is not included in the figures below. Our current annual costs of compliance are:

One person, 45 minutes per day, times 252 days per year. 189 hours at $10.84 per hour.	$2048.76
We average eleven mailings per day needing an envelope, cover letter, copy of MSDS, and postage. Total 57 cents each. $6.27 per day times 252 days.	$1580.04
Supervisor, one hour per week at $19.06 per hour times 52 weeks.	$991.12
Safety Coordinator, two hours per week at $21.23 per hour times 52 weeks.	$2207.92
Expense for having MSDS Sheets at all Western Extralite Company sales counters: One hour per week per branch, for ten branches. Cost per hour, $16.42, X 10, X 52 weeks	$8538.40
Yearly cost for being in compliance	$15,366.24

COMPLIANCE COSTS FOR MSDS FORWARDING REGULATIONS

Yearly cost to Western Extralite Company for MSDS forwarding compliance.		$15,366.24
Sales revenue for MSDS product for the twelve fiscal months ending March 25, 1995.		$87,243.64
Cost of MSDS forwarding compliance.		17.61%
Gross profit margin (sell price less cost) for a typical Electrical Wholesale Distributor -1993		19.25%
*Net Profit Before Taxes	1993	1.94%
	1992	1.74%

* Per Electrical Manufacturers Credit Bureau, 1993 Financial Norms of the Electrical Wholesaling Industry. (1994 Figures not yet available.)

3M General Offices
3M Center
St. Paul, Minnesota 55144-1000
612/733-1110

07-79
10686

MATERIAL SAFETY
DATA SHEET

3M

DIVISION: ELECTRICAL PRODUCTS DIVISION
TRADE NAME:
KIT 82-A1 (SCOTCHCAST 4)

U.P.C. NUMBER: 00-54007-25024-1

ISSUED: SEPTEMBER 1, 1993
SUPERSEDES: JULY 20, 1992
DOCUMENT: 10-5799-1

This product is a kit or a multipart product which consists of multiple, independently packaged components. An MSDS for each of these components is included. Please do not separate the component MSDSs from this cover page. The document numbers of the MSDSs for components of this product are:

10-2577-4

3M General Offices
3M Center
St. Paul, Minnesota 55144-1000
612/733-1110

07-79
10687

MATERIAL SAFETY
DATA SHEET

DIVISION: ELECTRICAL PRODUCTS DIVISION
TRADE NAME:
SCOTCHCAST BRAND 4 ELECTRICAL INSULATING RESIN

U.P.C. NUMBER: 00-54007-25594-9 00-54007-25677-9 00-54007-25685-4 00-54007-25693-9

ISSUED: NOVEMBER 20, 1992
SUPERSEDES: AUGUST 19, 1992
DOCUMENT: 10-2577-4

1. INGREDIENT

INGREDIENT	C.A.S. NO.	PERCENT		
PART A: BISPHENOL A - EPICHLOROHYDRIN COPOLYMER	25068-38-6			100.0
PART B: NONYL PHENOL	25154-52-3	35.0	-	45.0
EPOXY RESIN	70776-37-3	25.0	-	35.0
HEAVY NAPHTHENIC DISTILLATE SOLVENT PETROLEUM EXTRACTS	64742-11-6	13.0	-	16.0
N-AMINOETHYLPIPERAZINE	140-31-8	10.0	-	13.0
AROMATIC HYDROCARBONS, C12-20	70955-17-8	3.0	-	5.0
TRIS(2,4,6-DIMETHYLAMINOMONOMETHYL) PHENOL	90-72-2	2.0	-	5.0
CARBON BLACK	1333-86-4	0.1	-	1.0

2. PHYSICAL DATA

BOILING POINT:..... N/A
VAPOR PRESSURE:..... N/A
VAPOR DENSITY: ..... N/A
EVAPORATION RATE:..... N/A
SOLUBILITY IN WATER: ..... Nil
SP. GRAVITY:..... A:1.14 B:0.98
PERCENT VOLATILE: 0
VOLATILE ORGANICS: ..... N/D
VOC LESS H2O & EXEMPT SOLVENT N/D
pH: ..... N/A
VISCOSITY: A:5000cpsB:3500cps
MELTING POINT..... N/D
APPEARANCE AND ODOR: A:Clear amber liquid B:Black liquid, amine odor.

3. FIRE AND EXPLOSION HAZARD DATA

FLASH POINT:..... Both>230F Closed Cup
FLAMMABLE LIMITS - LEL: ..... N/D
FLAMMABLE LIMITS - UEL: ..... N/D
AUTOIGNITION TEMPERATURE: ... N/D
EXTINGUISHING MEDIA:
Carbon dioxide, Dry chemical, Foam
SPECIAL FIRE FIGHTING PROCEDURES:
Wear full protective clothing, including helmet, self-contained, positive pressure or pressure demand breathing apparatus, bunker coat and pants, bands around arms, waist and legs, face mask, and protective covering for exposed areas of the head.
UNUSUAL FIRE AND EXPLOSION HAZARDS:
No unusual fire or explosion hazards are anticipated.
NFPA-HAZARD-CODES: HEALTH 2 FIRE 1 REACTIVITY 0
UNUSUAL REACTION HAZARD: none

Abbreviations: N/D - Not Determined N/A - Not Applicable

3M General Offices
3M Center
St. Paul, Minnesota 55144-1000
612/733-1110

07-79
10688

MATERIAL SAFETY
DATA SHEET

MSDS: SCOTCHCAST BRAND 4 ELECTRICAL INSULATING RESIN
NOVEMBER 20, 1992

4. REACTIVITY DATA

STABILITY: Stable
INCOMPATIBILITY - MATERIALS TO AVOID:
Not applicable.
HAZARDOUS POLYMERIZATION: Will Not Occur
HAZARDOUS DECOMPOSITION PRODUCTS:
Oxides of nitrogen, carbon monoxide and carbon dioxide.

5. ENVIRONMENTAL INFORMATION

SPILL RESPONSE:
Observe precautions from other sections. Cover with absorbent material. Collect spilled material. Place in an approved metal container and seal.

RECOMMENDED DISPOSAL:
Cure product according to product instructions. Incinerate uncured waste in an industrial or commercial incinerator. Dispose of completely cured (or polymerized) material in a sanitary landfill.

ENVIRONMENTAL DATA:
No data available.

REGULATORY INFORMATION:
U.S. EPA Hazardous Waste Number = None (Not U.S. EPA Hazardous). Since regulations vary, consult applicable regulations or authorities before disposal.

SARA HAZARD CLASS:
FIRE HAZARD: No PRESSURE: No REACTIVITY: No ACUTE: Yes CHRONIC: Yes

6. SUGGESTED FIRST AID

EYE CONTACT:
Immediately flush eyes with large amounts of water. Get immediate medical attention.

SKIN CONTACT:
Flush skin with large amounts of water. If irritation persists, get medical attention.

INHALATION:
If signs/symptoms occur, remove person to fresh air. If signs/symptoms continue, call a physician.

IF SWALLOWED:
Do not induce vomiting. Drink two glasses of water. Call a physician.

7. PRECAUTIONARY INFORMATION

EYE PROTECTION:
Avoid eye contact. Wear safety glasses with side shields.

Abbreviations: N/D - Not Determined N/A - Not Applicable

3M General Offices
3M Center
St. Paul, Minnesota 55144-1000
612-733-1110

07-79
10689

MATERIAL SAFETY
DATA SHEET

MSDS: SCOTCHCAST BRAND 4 ELECTRICAL INSULATING RESIN
NOVEMBER 20, 1992

7. PRECAUTIONARY INFORMATION (continued)

SKIN PROTECTION:
Avoid skin contact..

VENTILATION PROTECTION:
Provide sufficient ventilation to maintain emissions below recommended exposure limits.

RESPIRATORY PROTECTION:
Avoid prolonged breathing of vapors..

PREVENTION OF ACCIDENTAL INGESTION:
Wash hands after handling and before eating.

RECOMMENDED STORAGE:
Keep out of the reach of children.

FIRE AND EXPLOSION AVOIDANCE:
Not applicable.

EXPOSURE LIMITS

INGREDIENTS	VALUE	UNIT	TYPE	AUTH	SKIN*
PART A: BISPHENOL A - EPICHLOROHYDRIN COPOLYMER	NONE	NONE	NONE	NONE	
PART B: NONYL PHENOL	NONE	NONE	NONE	NONE	
EPOXY RESIN	NONE	NONE	NONE	NONE	
HEAVY NAPHTHENIC DISTILLATE SOLVENT PETROLEUM EXTRACTS	NONE	NONE	NONE	NONE	
N-AMINOETHYLPIPERAZINE	NONE	NONE	NONE	NONE	
AROMATIC HYDROCARBONS, C12-20	NONE	NONE	NONE	NONE	
TRIS(2,4,6-DIMETHYLAMINOMONOMETHYL) PHENOL	5	ppm	TWA	CMRG	
TRIS(2,4,6-DIMETHYLAMINOMONOMETHYL) PHENOL	5	ppm	TWA	CMRG	Y
CARBON BLACK	3.5	mg/m3	TWA	ACGIH	
CARBON BLACK	3.5	mg/m3	TWA	OSHA	

* SKIN NOTATION: Listed substances indicated with "Y" under SKIN refer to the potential contribution to the overall exposure by the cutaneous route including mucous membrane and eye, either by airborne or, more particularly, by direct contact with the substance. Vehicles can alter skin absorption.

SOURCE OF EXPOSURE LIMIT DATA:
- ACGIH: American Conference of Governmental Industrial Hygienists
- OSHA: Occupational Safety and Health Administration
- CMRG: Chemical Manufacture Recommended Guidelines
- NONE: None Established

Abbreviations: N/D - Not Determined N/A - Not Applicable

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MATERIAL SAFETY
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MSDS: SCOTCHCAST BRAND 4 ELECTRICAL INSULATING RESIN
NOVEMBER 20, 1992

8. HEALTH HAZARD DATA

EYE CONTACT:
Moderate Eye Irritation: signs/symptoms can include redness, swelling, pain, tearing, and hazy vision.

SKIN CONTACT:
Allergic Skin Reaction: signs/symptoms can include redness, swelling, blistering, and itching.

Moderate Skin Irritation (after prolonged or repeated contact): signs/symptoms can include redness, swelling, itching, and dryness.

May be absorbed through the skin.

INHALATION:
Irritation (upper respiratory): signs/symptoms can include soreness of the nose and throat, coughing and sneezing.

WHILE THE FOLLOWING EFFECTS ARE ASSOCIATED WITH ONE OR MORE OF THE INDIVIDUAL INGREDIENTS IN THIS PRODUCT AND ARE REQUIRED TO BE INCLUDED ON THE MSDS BY THE U.S. OSHA HAZARD COMMUNICATION STANDARD, THEY ARE NOT EXPECTED EFFECTS DURING FORESEEABLE USE OF THIS PRODUCT.

Allergic Respiratory Reaction: signs/symptoms can include difficulty breathing, wheezing, tightness of chest, and respiratory failure.

Kidney Effects: signs/symptoms can include reduced urine volume, blood in urine and back pain.

Liver Effects: signs/symptoms can include yellow skin(jaundice) and tenderness of upper abdomen.

Nervous System Effects: signs/symptoms can include emotional changes, lack of coordination, tremors and sensory loss.

IF SWALLOWED:
Illness may occur after a single swallowing of relatively large quantities of this material.

Irritation of Gastrointestinal Tissues: signs/symptoms can include pain, vomiting, abdominal tenderness, nausea, blood in vomitus, and blood in feces.

WHILE THE FOLLOWING EFFECTS ARE ASSOCIATED WITH ONE OR MORE OF THE INDIVIDUAL INGREDIENTS IN THIS PRODUCT AND ARE REQUIRED TO BE INCLUDED ON THE MSDS BY THE U.S. OSHA HAZARD COMMUNICATION STANDARD, THEY ARE NOT EXPECTED EFFECTS DURING FORESEEABLE USE OF THIS PRODUCT.

Kidney Effects: signs/symptoms can include reduced urine volume, blood in urine and back pain.

Liver Effects: signs/symptoms can include yellow skin(jaundice) and tenderness of upper abdomen.

Abbreviations: N/D - Not Determined N/A - Not Applicable

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MATERIAL SAFETY
DATA SHEET

3M

MSDS: SCOTCHCAST BRAND 4 ELECTRICAL INSULATING RESIN
NOVEMBER 20, 1992

8. HEALTH HAZARD DATA (continued)

Nervous System Effects: signs/symptoms can include emotional changes, lack of coordination, tremors and sensory loss.

CANCER:
CARBON BLACK (BENZENE SOLVENT EXTRACTS) (1333-86-4) is a potential cancer hazard causing stomach and skin cancer by the dietary route of exposure in laboratory animal studies (IARC possible human carcinogen 2B, Calif. Proposition 65).

SECTION CHANGE DATES

ENVIRON. DATA	SECTION CHANGED SINCE	AUGUST 19, 1992 ISSUE
PRECAUT. INFO.	SECTION CHANGED SINCE	AUGUST 19, 1992 ISSUE

Abbreviations: N/D - Not Determined N/A - Not Applicable

WESTERN EXTRALITE COMPANY
DISTRIBUTORS OF QUALITY ELECTRICAL PRODUCTS

OSHA Hazard Communication Standard Material Safety Data Sheets (M.S.D.S.) are available for the following products normally stocked by us:

Manufacturer	Part Number	Description
BLACKBURN	**CTB**	Contax Contact Paste
CRC	**02005, 02006, 02009**	2-26 Lubricant
	02044	Red Spray-On Sealant
	02081	Cold Galvanizing
	02094	Silicone Lubricant
	02120, 02121, 02122	Motor Cleaner
	02125, 02126	Contact Cleaner
	02130, 02131	Contact Cleaner
	14005	Natural Degreaser
	14010	Wasp & Hornet Spray
	14050	Cutting Oil

CADWELD "ELECTRICAL WELDING MATERIAL." Catalog numbers 45, 65, 90, 115, & 150 which numbers represent the grams per package. The MSDS also applies to other put-ups not normally stocked by us.

CARLON	**VC9922, VC9923**	Medium Gray PVC Solvent Cement
	VC9982, VC9983	All-Weather "Quickset" Clear PVC Solvent Cement
	VC9993	ENT Blue "Quickset" Cement
GE	**RTV108**	Translucent Silicone Rubber Sealant
GREENLEE	**462-1**	Dark Thread Cutting Oil
3M	**Scotchkote**	Brush-On Electrical Coating
	82A1	"Scotchcast" Inline Splicing Kit (Resin)
	82A2	"Scotchcast" Inline Splicing Kit (Resin)
PERMA-COTE	**TC-1600**	PVC Touch-Up Compound
WIREMOLD	**GWE-S**	Gray Touch-Up Paint } A single MSDS
	IWE-S	Ivory Touch-Up Paint } applies to all
	W-ES	Buff Touch-Up Paint } three colors.
SPRAY PAINT	**ASA49**	Machine Dark Gray
	ASA61	Machine Light Gray

4-5-95

WESTERN EXTRALITE COMPANY

DISTRIBUTORS OF QUALITY ELECTRICAL PRODUCTS

2120 WYANDOTTE STREET • KANSAS CITY, MISSOURI 64108 1969 • (816)421 8404 • FAX (816)421 6211

August 14, 1990

Docket Office, Docket H-022G
Occupational Safety and Health Administration
Room N2625
200 Constitution Avenue, NW
Washington, DC 20210

TO WHOM IT MAY CONCERN:

We respectfully submit the following comments in response to the Occupational Safety and Health Administration Notice in the Federal Register, May 17, 1990, Vol. 55, No. 96:

Western EXTRALITE Company is a distributor of electrical supplies. As such, we purchase product, 1) place it on the shelf and reship it when we receive orders for it, or 2) purchase for shipment directly to the customer. We do not repackage chemically hazardous product.

To enhance worker safety, the Material Safety Data Sheet forwarding requirements should be changed. As presently constituted, these leave many workers without access to MSDSs at time of use even though their employers and the employers' suppliers are in compliance. This is true of construction, maintenance, and service personnel who use various hazardous chemicals on an intermittent rather than a continuous basis. Intermittent use, rather than continuous use, is typical of all but a very small number of workers among our customer base.

The present regulations require that we forward MSDSs to the employer at the time of first purchase of a hazardous chemical. From a practical point of view, this particular approach is very difficult to implement. A computer-based compliance system requires rather sophisticated software and uses up considerable memory capacity; a manual system is in its own way rather cumbersome. However, even if a system were foolproof, the MSDS goes to the employer rather than the worker using the product. If the worker uses the product prior to the MSDS being received by the employer, no matter how well the employer trains the worker, it is an after-the-fact situation. Another problem arises when the

manufacturer of the chemically hazardous product changes the configuration, but retains the trade name and catalog number; how are the employer and his worker to know which MSDS applies to the particular package that the worker is currently using? We can cite a number of other examples where the worker using the chemically hazardous product does not have ready access to the MSDS at the time of use.

Another problem inherent in the present process is the MSDS itself. Most of the information contained therein is so esoteric as to be understood only by professionals trained in chemistry or toxicology. Consequently, there is not much impetus for the worker to retain the little information that can be comprehended, no matter how much training the employer provides.

To replace the present MSDS forwarding process, we propose the following:

I. Establish a single repository, e.g. Chemtrec, for manufacturers to send MSDSs and future revisions.

Chemtrec is a separate organization within the Chemical Manufacturers Association. It is supported by more than 7000 companies, and its optical disc storage system contains 550,000 MSDSs. It is manned 24 hours a day.

We suggest that this concept be expanded to ten regional offices which align closely to the ten EPA regions and which could be manned 24 hours a day. The single repository would electronically scan MSDSs and transmit them from its central data base to the ten regional offices. A single 800 number listed on the manufacturer's label would route a call to the proper regional office based on the caller's area code mapped to the EPA region. This would eliminate missing MSDSs, misplaced ones, or the possibility of the MSDS reaching the employer

after use of the material, plus the multitude of other occurrences inherent in the present system.

An additional benefit would be that the MSDS could be structured to provide detailed specifications, recommendations for safe use of the product, physical hazards etc., all in technical terms for use by professionals and emergency response personnel. And, it would obviate the concern expressed in the Federal Register of 5/17/90, Page 20581, center column, "Issues Related To The Preparation of MSDSs and Labels".

In an emergency, immediate access to detailed chemical specifications is just a phone call away. Such information will permit not only the best and appropriate treatment, but also longer term care if indicated.

II. Each container/product is to bear a WARNING LABEL with these elements:

a. Safe usage, including special use instructions, such as safe disposal.

b. Information needed for first aid administration.

c. A product identification code.

d. The phone number for the MSDS Hot Line, per above, where complete information may be obtained 7 days a week, 24 hours a day.

III. IMPACT ON TRAINING REQUIREMENTS:

A. In terms of training, a definite differentiation should be made between the intermittent user and the "frequent-use" worker such as a production line employee whose duties require daily handling or exposure to hazardous chemicals.

For the intermittent user of chemically hazardous products (which is applicable to a very high percentage of employers and their workers), we recommend the following:

Include Warning Label awareness in a "Safe Work Habits" training program of which the use of Hazcom products is one element. Such training should stress:

1. Reading label prior to use.

2. Observing safe use instructions.

3. Keeping product container with Warning Label until task is completed.

4. Place emphasis on the concept that people need to be responsible and accountable for what they do in protecting themselves. (This applies equally to the intermittent user and the worker who uses chemically hazardous product on a continuing basis.)

5. In case of accident follow first-aid instructions or show label to first-aid provider who then can, if needed, contact MSDS Hot Line.

B. For "Production-Line" (non-intermittent) use of chemically hazardous products, we recommend the following:

1. Employer asks supplier of any chemical product for MSDS at time of purchase.

2. Upon receipt of product, receiving department forwards the Product I.D. Code to the person or department responsible for safety programs. (Incoming shipments are presently already marked with warning labels that conform to both DOT and OSHA requirements).

3. Above results in employer having MSDS available for training.

IV. ENHANCEMENTS OF PRODUCT IDENTIFICATION CODE AND PHONE NUMBERS FOR MSDS HOT LINE.

As was suggested earlier, we propose that a NATIONAL Product I.D. Code and Hot Line be established. The manufacturer of a chemically hazardous product would supply the I.D. Code and MSDS at the time the product comes to market. Upon reconfiguration of the product, a new I.D. Code and MSDS are given to the single National Repository.

V. BENEFITS AND ADVANTAGES

A. The placement of an I.D. Code on the label of a chemically hazardous product will permit the exact identification of an item's chemical composition. It will eliminate errors due to reconfiguration of an item whose trade name and catalog number may remain unchanged.

B. MSDS information is always only a phone call away at time of use and at point of use and need not be hunted for in a jobsite construction shack or a building superintendent's file cabinet.

C. It eliminates the paper blizzard and latent liability inherent in the present system. And it also puts an end to the costly maintenance of MSDS files which are now of only limited value.

D. Due to the very competitive environment in which our manufacturing, distribution, and service-providing (contractor) industries operate today, it won't be very long before the consumer will reap the benefits of our lower operating costs. It will also enable our manufacturers to compete that much better in the global market place.

E. Never least, the development of a single data base will supply various government agencies and private associations with a central source for information.

F. Finally, it leaves little to chance, and protects the worker in a most efficient manner.

VI. Broadly speaking, the "Performance-Oriented" requirements of the current HCS may be suited to chemical manufacturers, but they leave non-packaging distributors, such as ourselves, and their contractor and maintenance repair customer with serious latent liability. Although we at Western EXTRALITE Company make a continuing effort to comply with applicable regulations, things can fall through the cracks, whether through unintentional employee error, or circumstances beyond our control. The enhancements suggested above will eliminate such latent liability.

OTHER COMMENTS

A. We request that OSHA revise its HCS to state unequivocally that the non-packaging distributor and employer are not responsible for passing on the "appropriateness" of the hazard warning on the "Warning Label" but can rely solely on the information stated on the label. (See Federal Register/ Vol. 52, No. 163/ August 24, 1987, Page 31880, Column 3, (4) (f) (ii).)

B. With respect to question (39), we request that as an employer who has responsibility under the HCS, we be notified by OSHA of changes that affect us. For example, the current Request for Comments came to our attention quite by chance. Surely a way can be found to send us notice in writing of our responsibilities when regulations change.

Additionally, we should be made aware of the availability of booklets such as mentioned in (42), Compliance kits (43) or similar supplemental aids to HCS compliance.

We appreciate this opportunity to pass on suggestions for improving the HCS. These suggestions are the result of our experience of trying to be in compliance with present requirements. When adopted, they will enhance worker safety as well as employer productivity. Should you have questions or require further elaboration regarding our suggestions, please contact the writer.

Sincerely,

Ernest Isenberg

/bb

c: The Honorable Paul Simon
The Honorable Howard M. Metzenbaum
The Honorable Nancy Landon Kassebaum
The Honorable Joseph M. Gaydos

Chairman BOND. Thank you very much, Mr. Isenberg. Let me turn now to Mr. Hubbard.

Mr. ISENBERG. May I make one other request?

Chairman BOND. Sure.

Mr. ISENBERG. And that is, what is a small business? Would you ask your staff to define it and send us some kind of a memo on it?

Chairman BOND. It depends on what area you are looking at. We have got hundreds of definitions.

Mr. ISENBERG. Well, that is why I raised the question because I have heard 11, 15, 50, a hundred, 500, half a million dollars in sales. When, what, where?

Chairman BOND. Well, different statutes have different requirements. We generally operate in the Small Business Committee with any firm under 500 people, but that is a very broad brush because in some industries that would include everybody, and in some areas you might even have more employees and still be a small business.

Let me turn now to Mr. Hubbard.

STATEMENT OF LEON HUBBARD, HOMEBUILDER, HUBBARD ENTERPRISES, BLUE SPRINGS, MISSOURI

Mr. HUBBARD. I am Leon Hubbard, and there are a couple of corrections in my resume or part of it. It says I am a small home building company. I do not really build small homes necessarily. I have built some fairly large homes. And it said I was a——

Chairman BOND. Large home builder, small business.

Mr. HUBBARD. But also it says that I was a paid contractor. I was a paint contractor. I did not know I was getting paid, but I was a paint contractor for 24 years.

I am also going to talk about the Occupational Safety Health people, and one of my parts was Hazardous Communication, but a little more on the hands-on part of it. The Material Safety Data Sheets, we feel, are just really not useful in the home-building business. Practically everything that we use there comes in a can or a container of some sort that has the same material on it that is on the Material Safety Data Sheet, and for this reason we feel like it would be a lot easier just to get the can that the guy maybe inadvertently drank out of, which you would not think he would drink out of a paint can, and find out what to do rather than go through, and I brought a little prop, too. This is what I put together in 1992 when OSHA decided to make a little display here or an area that they were going to try to show us what OSHA could do, I guess you might say.

Chairman BOND. We worked with you on that——

Mr. HUBBARD. You sure did.

Chairman BOND [continuing]. And we appreciated your leadership in helping——

Mr. HUBBARD. We appreciated your help.

Chairman BOND [continuing]. To get that under control.

Mr. HUBBARD. This is full of Material Safety Data Sheets that could be on a small construction site, and to find what is in here, I could sure go to the source and find it a lot quicker than I could here. Now, I talked to Mr. McClatchy, who is an area inspector,

and he said that they are going to take a little different look, and we have made some progress, but they are going to take a little different look at this and that if there are no other violations, they are probably not going to be stressing the Material Safety Data Sheets. If there are other violations, why get on this real heavy in case, you know, but this was a $7,000 fine to start off with if you did not have these little books that I have here two years ago.

This regulation has been found to—that there was less than one percent of construction fatalities through materials that were on the job, but yet they still want to do these Material Safety Data Sheets. Builders use some hazardous material, but the hazards can be communicated to crews on a job site without a formalized, complicated training program. That includes MSDSs for every brand of caulk or building material that a subcontractor uses, so the risk involved, we feel like all the extra paperwork is just uncalled for.

In the Fall Protection area they have also said that they are going to be a little more lenient with our rough-in crews as far as putting on sheeting. They told us two years ago that we had to be wearing belts and lanyards, and they found out that after we told them that you cannot put a four-by-eight sheet of plywood down on a roof with a rope tied to the gable or the peak between you and the—so they had decided to help us out there a little bit.

They are requiring the roofing crews to wear the lanyards, which really does not make a lot of sense. If the rough-in crew, when he puts the sheeting on, has got the tow boards across there that he works off of, why cannot a roofer work off of the same situation, and what they are saying is anything over six foot height out of the ground and, of course, everything is over six foot, and it is over a 4–12 pitch, they have to wear lanyards or ropes to keep them from falling off the roof. People high jump six foot high to start with, and anybody, you know, that is a roofing company employee can walk a 6–12 pitch without any problem, so the 4–12 is simply too little of a slope to require it.

Next is the excavation, and these things that they are requiring are simply not feasible. For instance, when a crew is going out to waterproof a foundation after a foundation is put in, if it is over five foot in depth they are supposed to shore up around that foundation or they are supposed to slope the trench, so to speak. Well, you cannot slope it the way they want it sloped because you only have to be eight foot from the next property owner. In a lot of cases, in most towns that is the distance you have to be from the property line. If you slope it and if it was a finished house next door, you would be in the people's grass, and they are sure not going to like that.

The person that is actually in the overdig, between the wall and the overdig, all he is doing is making one pass around that foundation and he is sweeping off what little bit of concrete has fallen when the forms were taken off. He is not in that trench around that whole house, even a large house, for 10 minutes, and the rest of it is done with a spray machine and by putting gravel on the drain tile, so it is just completely ridiculous to expect you to go to maybe thousands of dollars to shore up this wall.

Another problem is the Multi-employer Worksite Policy where, if another employer on that worksite or subcontractor, if he does not

have his Material Safety Data Sheets or he has not done something on the job that should have been done, anybody on that job can be fined. In other words, everybody could be fined because this one person had not done what he was supposed to do.

In conclusion, as a small businessman I am increasingly burdened by regulations that are established for purposes that are not practical when they try to be implemented. I cannot afford to hire a specialist to oversee the local, state and federal regulations that impact home building. I build and sell homes and manage the day-to-day operations of my business.

The overly-complex regulations make it tough for a small businessman to survive. Excessive regulations result in significant expense and delays as I spend more time pushing paper and less time producing results. OSHA is one of the many areas that demand reform and simplification. Ultimately, buyers suffer as homes become more expensive because of the weight of government regulations.

One other thing I would like to mention is something right now that is before Congress. They want to put into effect that every job site has to have a safety superintendent. That would probably cost every house in the neighborhood $3,500 to $5,000 to have a job safety superintendent, so this is something we really want to get knocked down before it hits us in the back of the head, so to speak. Thank you.

[The prepared statement and attachment of Mr. Hubbard follow:]

Testimony of Mr. Leon Hubbard
before the Small Business Committee of the U.S. Senate
April 12, 1995
University of Missouri Kansas City

The Honorable Christopher S. Bond, Senator

Introduction

Good morning. My name is Leon Hubbard, and I want to thank you for the opportunity to provide input as you examine ways to provide regulatory relief to the small business community.

I own a small home building company and work and live in Blue Springs, Missouri. I've worked as a paid contractor for 24 years and as a home builder for 12 years. I'm well acquainted with meeting a payroll and with government, since I served on the Blue Springs City Council for 8 years (1976-1984). I've been a member of the Home Builders Association of Greater Kansas City (HBA) since 1985.

I would like to speak today about Occupational Safety & Health Administration (OSHA) regulations and the problems they create for the residential construction industry. I recognize the importance of safety on the jobsite, but a balance is needed. Further, regulations that impact the construction industry must distinguish important differences between the residential and commercial sectors of the industry.

- Hazard Communication Standard
- Fall Protection
- Excavations
- Multi-employer Citations

Hazard Communication Standard (HazCom)
29 CFR 1926.59

The HazCom standard is overly burdensome because it requires builders to gather and transmit a great deal of paperwork. This standard is currently the number one cited standard by OSHA. Many of the citations are for failure to gather the proper Material Safety Data Sheets (MSDS) for all the hazardous products on a site. Additional citations are for lack of a written hazard communication program.

The regulation remains in effect in spite of a 1992 OSHA study that indicated that less than 1% of all construction fatalities resulted from chemical exposure.

Builders use some hazardous materials, but the hazards can be communicated to crews on a jobsite without a formalized, complicated program training program that includes MSDSs for every brand of caulk or building material that a subcontractor uses. More important, product labels contain warnings about hazards which should be sufficient to protect workers.

I think the risk of injury or illness from chemical exposure is minimal on a construction site so relief from the HazCom standard is justifiable.

Fall Protection Regulation
29 CFR 1926.500-.503 (Subpart M)

This regulation is complicated and was revised in 1994 to distinguish between residential and heavy commercial construction. The regulation requires employers to provide fall protection to each employee, including training for all employees who are exposed to fall hazards; written fall protection plans, and in some cases, the purchase of expensive fall protection equipment such as harnesses and lanyards.

When the employer can demonstrate that conventional fall protection systems -- lifeline type systems, guardrails, or safety nets -- will be unfeasible or create a greater hazard, the employer shall develop and implement a Fall Protection Plan that is site-specific. Builders and subs must keep and maintain complete paperwork that justifies the alternative plan. The plan must include these details:

- The plan must be site-specific, prepared by a qualified person, and updated;
- Implementation of the plan will be under the supervision of a competent person and shall be kept on every jobsite;
- Reasons why conventional fall protection will create a greater hazard and how fall hazards will be eliminated or reduced through alternative fall protection systems must be provided in very specific terms in writing. Each location where conventional fall protection systems cannot be used will be identified as controlled access zones;
- Each employee permitted in the CAZ shall be identified either by name in the plan or in some other manner (e.g. "all CAZ entrants wear red hats"). No other employees may enter the CAZ.
- Any fall, near miss or equivalent will be investigated and changes to the plan will be made as necessary to prevent future incidents.

I've attached to this testimony a copy of the **81-page regulation** on Fall Protection. *I suggest these plans be provided for each company as opposed to the more extensive standard of one per every jobsite.*

Excavations
29 CFR 1926.650 - 652

This regulation can be unfeasible as applied in the residential construction industry. During the installation of drain tiles and waterproofing activities, many subcontractor employees enter unprotected trenches. The trench is created after the basement/foundation wall (blocked or poured) is installed inside the original excavation. In many cases there is no way to protect the trench from caving in because of limited space on the lot or because the protection itself would obstruct the waterproofing work.

Exempting residential builders from protection requirements when compliance is unfeasible would provide relief to employers who attempt compliance, fail, and suffer penalties. When builders are unable to "shore," they should be allowed to implement *safe work practices* (e.g. employee traning) and work outside the trench as much as possible.

Multi-employer Worksite Policy

In the late 1980s, OSHA began to vigorously utilize their multi-employer worksite policy, which requires the controlling employer (builder) to maintain the safety on the project regardless of whether the builder had employees on site. In practice, OSHA is asking the builder to control the jobsite for safety, or to do OSHA's job for them. *One employer can be cited for the violations of another, which goes beyond the intention of the OSHA Act.*

The builder does not actually have to perform safety functions for the subcontractor's employees, but must ensure the sub is performing the safety functions. In many cases the sub receives safety training and assistance from the builder as a good faith action in the hopes OSHA will look favorably on the builder if an inspection was to occur.

This practice has many builders concerned about the independent status of the sub. We believe every employer should be responsible for his own employees, and OSHA should penalize non-compliant employers accordingly.

Conclusion

As a small businessman, I am increasingly burdened by regulations that are established for good purposes but are impractical once implemented. I can't afford to hire a specialist to oversee the local, state and federal regulations that impact home building. I build and sell homes and manage the day-to-day operations of my business.

Overly complex regulations make it tough for the small businessman to survive. ***Excessive regulations result in significant expense and delay as I spend more time pushing paper and less time producing results. OSHA is one of many areas that***

demand reform and simplification. Ultimately, buyers suffer as homes become more expensive under the weight of governmental red tape.

Thank you for hearing my concerns. I'm happy to answer any questions you may have.

[An additional attachment to Mr. Hubbard's prepared statement, the Federal Register dated August 9, 1994, has been retained in the Committee's files.]

SAMPLE FALL PROTECTION PLAN FOR RESIDENTIAL CONSTRUCTION

(Insert Company Name)

THIS FALL PROTECTION PLAN IS SPECIFIC FOR THE FOLLOWING PROJECT:

Location of Job _____
Date Plan Prepared or Modified _____
Plan Prepared By _____
Plan Approved By _____
Plan Supervised By _____

The following Fall Protection Plan is a sample program prepared for the prevention of injuries associated with falls. A Fall Protection Plan must be developed and evaluated on a site by site basis. It is recommended that builders discuss the written Fall Protection Plan with their OSHA Area Office prior to going on a jobsite.

I. STATEMENT OF COMPANY POLICY

(Your company name here) is dedicated to the protection of its employees from on-the-job injuries. All employees of (Your company name here) have the responsibility to work safely on the job. The purpose of the plan is to supplement our existing safety and health program and to ensure that every employee who works for (Your company name here) recognizes workplace fall hazards and takes the appropriate measures to address those hazards.

This Fall Protection Plan addresses the use of conventional fall protection at a number of areas on the project, as well as identifies specific activities that require non-conventional means of fall protection. During the construction of residential buildings under 48 feet in height, it is sometimes infeasible or it creates a greater hazard to use conventional fall protection systems at specific areas or for specific tasks. The areas or tasks may include, but are not limited to:

a. Setting and bracing of roof trusses and rafters;
b. Installation of floor sheathing and joists;
c. Roof sheathing operations; and
d. Erecting exterior walls.

In these cases, conventional fall protection systems may not be the safest choice for builders. This plan is designed to enable employers and employees to recognize the fall hazards associated with this job and to establish the safest procedures that are to be followed in order to prevent falls to lower levels or through holes and openings in walking/working surfaces.

Each employee will be trained in these procedures and will strictly adhere to them except when doing so would expose the employee to a greater hazard. If, in the employee's opinion, this is the case, the employee is to notify the competent person of their concern and have the concern addressed before proceeding.

It is the responsibility of (name of competent person) to implement this Fall Protection

Plan. Continual observational safety checks of work operations and the enforcement of the safety policy and procedures shall be regularly enforced. The crew supervisor or foreman (insert name) is responsible for correcting any unsafe practices or conditions immediately.

It is the responsibility of the employer to ensure that all employees understand and adhere to the procedures of this plan and to follow the instructions of the crew supervisor. It is also the responsibility of the employee to bring to management's attention any unsafe or hazardous conditions or practices that may cause injury to either themselves or any other employees. Any changes to the Fall Protection Plan must be approved by (name of qualified person).

II. FALL PROTECTION SYSTEMS TO BE USED ON THIS JOB

Installation of roof trusses/rafters, exterior wall erection, roof sheathing, floor sheathing and joist/truss activities will be conducted by employees who are specifically trained to do this type of work and are trained to recognize the fall hazards. The nature of such work normally exposes the employee to the fall hazard for a short period of time. This Plan details how (Your company name here) will minimize these hazards.

Controlled Access Zones

When using the Plan to implement the fall protection options available, workers must be protected through limited access to high hazard locations. Before any non-conventional fall protection systems are used as part of the work plan, a controlled access zone (CAZ) shall be clearly defined by the competent person as an area where a recognized hazard exists. The demarcation of the CAZ shall be communicated by the competent person in a recognized manner, either through signs, wires, tapes, ropes, or chains. (Your company name here) shall take the following steps to ensure that the CAZ is clearly marked or controlled by the competent person:

- all access to the CAZ must be restricted to authorized entrants;
- all workers who are permitted in the CAZ shall be listed in the appropriate sections of the Plan (or be visibly identifiable by the competent person) prior to implementation;
- the competent person shall ensure that all protective elements of the CAZ be implemented prior to the beginning of work.

Installation Procedures for Roof Truss and Rafter Erection

During the erection and bracing of roof trusses/rafters, conventional fall protection may present a greater hazard to workers. On this job, safety nets, guardrails and personal fall arrest systems will not provide adequate fall protection because the nets will cause the walls to collapse, while there are no suitable attachment or anchorage points for guardrails or personal fall arrest systems.

On this job, requiring workers to use a ladder for the entire installation process will cause a greater hazard because the worker must stand on the ladder with his back or side to

the front of the ladder. While erecting the truss or rafter the worker will need both hands to maneuver the truss and therefore cannot hold onto the ladder. In addition, ladders cannot be adequately protected from movement while trusses are being maneuvered into place. Many workers may experience additional fatigue because of the increase in overhead work with heavy materials, which can also lead to a greater hazard.

Exterior scaffolds cannot be utilized on this job because the ground, after recent backfilling, cannot support the scaffolding. In most cases, the erection and dismantling of the scaffold would expose workers to a greater fall hazard than erection of the trusses/rafters.

On all walls eight feet or less, workers will install interior scaffolds along the interior wall below the location where the trusses/rafters will be erected. "Sawhorse" scaffolds constructed of 46 inch sawhorses and 2x10 planks will often allow workers to be elevated high enough to allow for the erection of trusses and rafters without working on the top plate of the wall.

In structures that have walls higher than eight feet and where the use of scaffolds and ladders would create a greater hazard, safe working procedures will be utilized when working on the top plate and will be monitored by the crew supervisor. During all stages of truss/rafter erection the stability of the trusses/rafters will be ensured at all times.

(Your company name here) shall take the following steps to protect workers who are exposed to fall hazards while working from the top plate installing trusses/rafters:

- only the following trained workers will be allowed to work on the top plate during roof truss or rafter installation:

  _____

  _____

  _____

- workers shall have no other duties to perform during truss/rafter erection procedures;
- all trusses/rafters will be adequately braced before any worker can use the truss/rafter as a support;
- workers will remain on the top plate using the previously stabilized truss/rafter as a support while other trusses/rafters are being erected;
- workers will leave the area of the secured trusses only when it is necessary to secure another truss/rafter;
- the first two trusses/rafters will be set from ladders leaning on side walls at points where the walls can support the weight of the ladder; and
- a worker will climb onto the interior top plate via a ladder to secure the peaks of the first two trusses/rafters being set.

The workers responsible for detaching trusses from cranes and/or securing trusses at the peaks traditionally are positioned at the peak of the trusses/rafters. There are also situations where workers securing rafters to ridge beams will be positioned on top of the ridge beam.

(Your company name here) shall take the following steps to protect workers who are exposed to fall hazards while securing trusses/rafters at the peak of the trusses/ridge beam:

- only the following trained workers will be allowed to work at the peak during roof truss or rafter installation:

  _____

  _____

  _____

- once truss or rafter installation begins, workers not involved in that activity shall not stand or walk below or adjacent to the roof opening or exterior walls in any area where they could be struck by falling objects;
- workers shall have no other duties than securing/bracing the trusses/ridge beam;
- workers positioned at the peaks or in the webs of trusses or on top of the ridge beam shall work from a stable position, either by sitting on a "ridge seat" or other equivalent surface that provides additional stability or by positioning themselves in previously stabilized trusses/rafters and leaning into and reaching through the trusses/rafters;
- workers shall not remain on or in the peak/ridge any longer than necessary to safely complete the task.

Roof Sheathing Operations

Workers typically install roof sheathing after all trusses/rafters and any permanent truss bracing is in place. Roof structures are unstable until some sheathing is installed, so workers installing roof sheathing cannot be protected from fall hazards by conventional fall protection systems until it is determined that the roofing system can be used as an anchorage point. At that point, employees shall be protected by a personal fall arrest system.

Trusses/rafters are subject to collapse if a worker falls while attached to a single truss with a belt/harness. Nets could also cause collapse, and there is no place to attach guardrails.

All workers will ensure that they have secure footing before they attempt to walk on the sheathing, including cleaning shoes/boots of mud or other slip hazards.

To minimize the time workers must be exposed to a fall hazard, materials will be staged to allow for the quickest installation of sheathing.

(Your company name here) shall take the following steps to protect workers who are exposed to fall hazards while installing roof sheathing:

- once roof sheathing installation begins, workers not involved in that activity shall not stand or walk below or adjacent to the roof opening or exterior walls in any area where they could be struck by falling objects;
- the competent person shall determine the limits of this area, which shall be clearly communicated to workers prior to placement of the first piece of roof sheathing;
- the competent person may order work on the roof to be suspended for brief periods as necessary to allow other workers to pass through such areas when this would not create a greater hazard;

- only qualified workers shall install roof sheathing;
- the bottom row of roof sheathing may be installed by workers standing in truss webs;
- after the bottom row of roof sheathing is installed, a slide guard extending the width of the roof shall be securely attached to the roof. Slide guards are to be constructed of no less than nominal 4" height capable of limiting the uncontrolled slide of workers. Workers should install the slide guard while standing in truss webs and leaning over the sheathing;
- additional rows of roof sheathing may be installed by workers positioned on previously installed rows of sheathing. A slide guard can be used to assist workers in retaining their footing during successive sheathing operations; and
- additional slide guards shall be securely attached to the roof at intervals not to exceed 13 feet as successive rows of sheathing are installed. For roofs with pitches in excess of 9-in-12, slide guards will be installed at four-foot intervals.
- when wet weather (rain, snow, or sleet) are present, roof sheathing operations shall be suspended unless safe footing can be assured for those workers installing sheathing.
- when strong winds (above 40 miles per hour) are present, roof sheathing operations are to be suspended unless wind breakers are erected.

Installation of Floor Joists and Sheathing

During the installation of floor sheathing/joists (leading edge construction), the following steps shall be taken to protect workers:

- only the following trained workers will be allowed to install floor joists or sheathing;

  _____

  _____

  _____

- materials for the operations shall be conveniently staged to allow for easy access to workers;
- the first floor joists or trusses will be rolled into position and secured either from the ground, ladders or sawhorse scaffolds;
- each successive floor joist or truss will be rolled into place and secured from a platform created from a sheet of plywood laid over the previously secured floor joists or trusses;
- except for the first row of sheathing which will be installed from ladders or the ground, workers shall work from the established deck; and
- any workers not assisting in the leading edge construction while leading edges still exist (e.g. cutting the decking for the installers) shall not be permitted within six feet of the leading edge under construction.

Erection of Exterior Walls

During the construction and erection of exterior walls, employers shall take the following steps to protect workers:

- only the following trained workers will be allowed to erect exterior walls:

  _____

  _____

  _____

- a painted line six feet from the perimeter will be clearly marked prior to any wall erection activities to warn of the approaching unprotected edge;
- materials for operations shall be conveniently staged to minimize fall hazards; and
- workers constructing exterior walls shall complete as much cutting of materials and other preparation as possible away from the edge of the deck.

III. ENFORCEMENT

Constant awareness of and respect for fall hazards, and compliance with all safety rules are considered conditions of employment. The crew supervisor or foreman, as well as individuals in the Safety and Personnel Department, reserve the right to issue disciplinary warnings to employees, up to and including termination, for failure to follow the guidelines of this program.

IV. ACCIDENT INVESTIGATIONS

All accidents that result in injury to workers, regardless of their nature, shall be investigated and reported. It is an integral part of any safety program that documentation take place as soon as possible so that the cause and means of prevention can be identified to prevent a reoccurrence.

In the event that an employee falls or there is some other related, serious incident occurring, this plan shall be reviewed to determine if additional practices, procedures or training need to be implemented to prevent similar types of falls or incidents from occurring.

V. CHANGES TO PLAN

Any changes to the plan will be approved by (name of the qualified person). This plan shall be reviewed by a qualified person as the job progresses to determine if additional practices, procedures or training needs to be implemented by the competent person to improve or provide additional fall protection. Workers shall be notified and trained, if necessary, in the new procedures. A copy of this plan and all approved changes shall be maintained at the jobsite.

Chairman BOND. Thank you very much, Mr. Hubbard. Ms. Potts.

STATEMENT OF SHIRLEY J. POTTS, PRESIDENT, DLT TRANSPORTATION SERVICES, KANSAS CITY, MISSOURI

Ms. POTTS. Mr. Chairman, I would like to thank this committee for the invitation to appear today. Federal laws imposing burdensome compliance costs often do not apply to the smallest businesses in our country. The existence of thresholds reflect the recognition of legislators that the impact of these laws is intensified on the smaller businesses. Thresholds based purely on the number of employees hurts labor-intensive companies trying to grow such as DLT.

DLT Transportation Services began in 1976 to process freight bills. Each freight bill required manual processing data entry. All growth necessitated more employees.

During the 1980s we were acquired by another company, and then they were purchased by a public company, and in '88 I was able to take it private. Since then our revenues have grown steadily and we have been able to expand services and offerings in our electronic capabilities. Now some of the manual handling and data entry can be avoided through EDI, but we are still very labor-intensive, and growth does translate into additional employees.

In 1988 we had 10 employees. We now have 35 full-time, five part-time and four temp-to-permanent employees that soon will become full-time staff. Regulatory issues are multiplying as our business grows, as any business grows. The thresholds that we have already exceeded are 4, 11, 15, 20 employees for Immigration, ADA, Civil Rights, Age Discrimination Acts, and we are now coming upon, we hope, the thresholds of 50 and 100 employees.

As small businesses grow through these thresholds, many owners seriously question the wisdom of additional growth. Some choose to limit their growth. Some choose to freeze the number of full-time employees by using part-time or temps or outside contractors, but volume is the key to our business and the key to our bottom-line increasing, so our business plan does call for continued growth.

It has become evident that the growth of our economy in the United States can be attributed to small businesses, and yet each additional regulation imposes burdensome compliance issues, reporting costs and fear to small businesses, and I think "fear" is an accurate description. We are presumed guilty or we must pay, and we must pay either through penalties or defense costs. There is a fear that one mistake can mean substantial costs, maybe even the cost of our business and all the jobs that go with it.

A more progressive atmosphere would be especially helpful to small businesses such as federal agencies providing education, no-fault audits, good advice and assistance versus focusing on penalties. Incentives for compliance would also be a much more positive approach.

Regulations are either on or off, based on the applicable threshold with no phase-in plans. We fear complex requirements, rigid enforcement standards and the unknown, an unknown regulation that suddenly applies to us just because we hired one more full-time employee. Other factors such as revenues we feel are certainly relevant. They are relevant to our ability to meet the requirements

of these regulations. Much of the cost is the same for compliance whether we have 10 employees or 500 employees, but the economic impact needs to be seriously considered.

My own company certainly has responded to regulatory fears. We use outside specialists for 401(k) plan administration, payroll processing and reporting, employee manual updates and reviews and other filings through our attorney and CPA, and then also our full-time employees are now hired through temp agencies as temp-to-permanent employees, and we feel this limits our exposure through assessing their skills before we actually put them on as full-time employees. So we can now hire minorities and mature adults and disabled without the fear that we must continue their employment even if they do not meet our requirements and standards. Obviously, these solutions are costly, and we can identify over $18,000 last year we spent.

In summary, regulatory threshold should be given serious consideration as Congress reviews or reauthorizes these laws, evaluates the employee thresholds, assesses the need for threshold phase-in plans and provides education and advice to small businesses so that they can comply. I believe, and I think everyone here certainly would agree, that most small business owners are hard-working, honest individuals who care about their employees and their customers. We understand that to compete we must provide a good environment and stability for our employees and that our employee relationships directly affect our customer relationships, so we are just asking to be able to do business without the unnecessary regulations and the fears that sidetrack our companies. Thank you.

[The prepared statement of Ms. Potts follows:]

STATEMENT OF SHIRLEY J POTTS
DLT TRANSPORTATION SERVICES

SENATE SMALL BUSINESS COMMITTEE HEARINGS

APRIL 12, 1995

Federal laws imposing burdensome compliance costs often do not apply to the smallest businesses in our country. The existence of thresholds reflect the recognition of legislators that the impact of these laws is intensified on the smaller businesses. Thresholds based purely on the number of employees hurts labor-intensive companies trying to grow such as DLT.

DLT Transportation Services began business in 1976 to process freight bills. The "T" in DLT was President and I was the only other full-time employee as Office Manager. DLT obtained a SBA loan in 1977 to finance new software developement and growth. As each freight bill required manual processing and data entry, all growth necessitated more employees.

During the 1980s, DLT was acquired by another company who was then acquired by a public company. In 1988, I was able to take DLT private again with the assistance of the SBA. The SBA loan guarantee was a critical component to my purchase of DLT. More importantly, the business survived, the jobs continue and DLT is thriving. We would not be in favor of jeopardizing the SBA through privatization.

Since 1988 our revenues have grown steadily and are averaging 15-20 percent per year. Our customers are shippers and receivers ranging from the very small to Fortune 500 companies. These shipper/receivers are based throughout the United States, Puerto Rico and Canada with domestic and international shipments worldwide.

DLT has expanded its service offerings and electronic capabilities. Some of the manual handling and data entry can now be avoided through Electronic Data Interchange (EDI). Still our business is very labor-intensive and growth translates in additional employees.

In 1988, DLT had 10 employees. We now have 35 full-time and 5 part-time employees with 4 temp-to-permanent positions soon to become full-time staff.

Regulatory issues are multiplying as our business grows. We have already exceded the "Small Business" thresholds of 4, 11, 15 and 20 employees for Immigration, ADA, Civil Rights and Age Discrimination Acts to name a few. We are obviously approaching other "small business" thresholds at 50 and 100 employees for the Worker Adjustment and Retraining Notification Act (WARN), Family Medical Leave Act and Employee Retirement Income Security Act (ERISA).

As small businesses grow up through these thresholds, many owners seriously question the wisdom of additional growth. Some choose to limit the growth of their companies while others choose to freeze the number of full-time employees through the use of part-time employees, temps or outside contractors. Volume is the key to increasing DLT's bottom line, so our business plan calls for continued growth.

It has become evident that much of the growth of our economy in the United States can be attributed to small business. Every additional regulation imposes burdensome compliance issues, reporting costs and/or fear to small businesses. "Fear" is an accurate description of many small business owners' feelings toward regulations. We are presumed guilty and must pay either through penalties or defense costs. There is a fear that one mistake can mean substantial costs -- maybe the cost of our business and jobs.

A more progressive atmosphere would be especially helpful to small businesses: Federal Agencies providing education, no-fault audits, good advice and assistance versus focusing on penalties. Incentives for compliance would also be a much more positive approach.

Regulations are either "on" or "off" based on the applicable threshold with no phase-in plan. We fear the complex requirements, rigid enforcement standards and the unknown. An unknown regulation that suddenly applies to us because we just hired one more employee. Other factors such as revenues certainly are relevant to our ability to meet the requirements of these regulations. Much of the costs of compliance is the same whether a company has 10 employees or 1000.

My own company certainly has responded to regulatory fears. We use outside specialists for our 401k plan administration, payroll processing and reporting, employee manual updates, and other filings through our attorney and CPA. As I mentioned earlier, our full-time employees are hired through an agency as temps-to-permanent. We feel this limits our exposure through assessing their skills before actually putting new people on our payroll. In this manner, we hire minorities, mature adults and the disabled without the fear that we will be "stuck" with them if they do not work out. Obviously, these solutions are costly. We can identify over $18,000 spent on these in 1994.

While on the the subject of "fears" to small business, frivilous lawsuits must be mentioned. Small businesses need solutions to the litigation explosion such as loser pays. Also, we are currently addressing our business succession planning. It is wrong for us to be forced to use current resources needed in our business to prevent loss of the business by our heirs due to estate taxes.

In summary, regulatory thresholds should be given serious consideration as Congress reviews or reauthorizes these laws. Evaluate the employee thresholds. Assess the need for threshold phase-in plans. Provide for education and advice to small businesses so that they can comply.

Most small business owners are hard-working, honest individuals who care about their employees and customers. We understand that to compete, we must provide a good environment and stability for our employees. Our employee relationships directly affect our customer relationships. Let us "do business" without unnecessary regulations and fears that sidetrack our company.

Thank you for this opportunity.

Chairman BOND. Thank you very much, Ms. Potts. Now I turn to Mr. Wheeler.

STATEMENT OF ROBERT G. WHEELER, PRESIDENT, MAR-BECK APPLIANCE SERVICE CO. INC., KANSAS CITY, MISSOURI

Mr. WHEELER. Senator Bond, thank you for the opportunity to participate in today's hearing. As the owner of a small retail business since 1980, I believe that we are nearing regulatory overload. I applaud your committee's interest in this difficult issue.

In February I attended the Missouri White House Conference on Small Business. The head of the Small Business Administration, Phil Lader, personally spoke and challenged our group to name one federal regulation that should be abolished. After 40 appearances, not one letter indicting a specific regulation had arrived to date, and Mr. Lader concluded that the regulatory burden on small business had been overstated. A 78-year-old businessman from central Missouri sitting beside me shook his head and responded as follows: "Don't ask me which shot of whiskey got me drunk. It's the whole damn bottle." That was a quote.

The man from Missouri saw a regulations problem, not a problem regulation, and I agree. If your committee seeks to individually purge onerous regulations that impact small business, I believe you will fail. Federal agencies can generate new rules faster than you can stamp them out. Seek to reduce the exposure of small business to all regulations, and I believe you can genuinely reduce our burden.

It is difficult to argue against individual rules calling for worker safety, fairness or a clean environment. However, it is reasonable to contend that small business people can and will act responsibly on most issues without the threat of investigations or fines.

My business is rarely impacted significantly by a single bad regulation. Rather, I am overwhelmed by the shear volume of rules that I must administer, the complexity of those rules and the time needed to understand and comply with thousands of requirements.

While tax and payroll reporting requirements are clearly the most costly federal regulations to my firm, I accept the inherent complexity of the tax code and costly professional accounting as probably unavoidable burdens. Still, burdens make my company disproportionately less able to compete with larger firms who spread similar costs over revenues that exceed mine by as much as a thousand-fold.

Large firms now take a similar approach with virtually every regulatory agency. Big business can cost-effectively devote specialized staff to Wage and Hour, EEOC, OSHA, ADA, COBRA, ERISA, FMLA, EPA and the thousands of regulations that they generate. Large firms can fund unlimited mandates by simply passing costs along to consumers through higher prices.

Small firms can hire professionals to help administer regulatory as well as tax compliance; however, our ability to absorb additional disproportionately higher administrative costs can quickly make it impossible to compete with the larger firms.

Issues handled routinely by specialized staff in large firms can cost me thousands of dollars in professional fees or hours of personal research. An OSHA–Safety Material Data Sheet takes my

firm and Wal-Mart exactly the same amount of time to complete. Even if specific requirements and regulations are concise and reasonable, small business is disadvantaged by the economies-of-scale every single time.

Finally, let me suggest several solutions that I believe are workable and can provide some significant relief. One, create a uniform small business exemption of at least 50 employees for all statutory regulations except the tax code, Wage and Hour and high probability safety hazards. Two, strengthen the oversight powers of the Paperwork Reduction Act and Regulatory Flexibility Act largely ignored by agencies at this time.

Three, require all agencies to operate 800-based information lines to more quickly answer questions and process orders for reference materials. Four, exempt small businesses from OSHA penalties for all first-time violations unless willful and serious. Five, require the SBA to mail a comprehensive handbook of small business regulatory obligations to all new firms as they receive their federal identification number.

Like most small business people I cannot afford to pay professional consultants thousands of dollars to create a textbook compliance program for each federal agency. I rely on common sense, I read available reference materials and I simply squeeze in another hour or two or 10 when a new issue arises. But, in a small business maybe more than any other, time is money. On average I probably only spend 10 to 15 percent of my week on regulatory issues exclusive of tax and payroll. Still, that is over 30 days each year, and in that same 30 days I can open a new Mar-beck location and create two new jobs.

My 78-year-old friend from central Missouri would say that it is time to start pouring out the bottle of federal regulations and trust the judgment and common sense of a responsible small business community, and I agree.

Chairman BOND. Thank you very much, Mr. Wheeler. All of you have given us a number of things to think about. I might go back to Mr. Isenberg and ask that you give us a little more of an insight into the reforms that you would suggest in addition to the telephone, the central telephone, the 800 number. Would that deal with most of the problems on the Material Safety Data Sheet?

Mr. ISENBERG. Yes. It would eliminate the forwarding process and, as this gentleman here said, he has got this stack of MSDSs lying on the job site. What good do they do if someone is really seriously injured? Somebody has to find the right one, and if it is a larger construction such as a high-rise building and their binder is this thick in the superintendent's office, the process is not effective. The process that we propose here will eliminate these problems.

Another problem occurs when the manufacturer changes the chemical configuration of a product but still uses the same trade name and catalog number. How is the builder on the job, he has got four cans of this stuff sitting there, know which one belonged to the old and which one belonged to the new? The process that we propose, simple, would eliminate that particular situation.

As I indicated, we have been trying to do this since 1988. Additional benefit would be that the MSDS can be even more technical than it is today so that in case of an accident the first aid provider

or the emergency hospital room can contact. Training is simple. Call your people and say, look, look at the label before you use the product, make yourself aware of the hazard, keep the can or the wrapper, whatever it is and do not throw it away until you have completed the job. That way it is virtually fail-safe.

Chairman BOND. In other words, the instructions generally are on the can or the container. The Material Safety Data Sheet is only necessary if there is an accident involving that particular item?

Mr. ISENBERG. Say they are in a close space and they have used some kind of a product that causes them to faint or something like that. Then the MSDS will tell the health care provider what the poisonous substance is, and they can then take the best measures to eliminate the illness.

One other thing, this gentleman over here, they do retail. If I walk in there as an individual and buy a product that is chemically hazardous, he does not have to give me an MSDS. If I walk in there as an employee of Western Extralite, it is his responsibility to give me an MSDS. Again, our proposed system will eliminate that because the information that is needed to be safe is right on the can.

Chairman BOND. After you write those things, does anybody ever read those?

Mr. ISENBERG. I have been at training meetings at contractors' places of business where they have called in their people after hours, paid time, and they start going through, these are the 10 most hazardous products, fellows, that you are going to see on the job, and they go through this, and these guys doze off. I am not saying that—the largest percentage of usage is on an intermittent basis. Do you agree with me?

Again, production line workers, where you use hazardous products on a continued basis, different story, and those people can be trained to do that, and when OSHA was first, the Hazard Communication Standard was first instituted, I forget when it was. It was in the '70s sometime, I believe, or early '80s. It was intended for manufacturing customers only. That presented another problem to us, not particularly relevant at the moment, so then there was some litigation, and as a result of the court ruling, the MSDS forwarding process became mandatory for all employer-customers.

Chairman BOND. Let us turn to Mr. Hubbard. You are jointly liable if another employer is on the site and does not have that. How does that work? How in the dickens are you going to ask the other guy, say, let me see your MSDSs?

Mr. HUBBARD. Well, if an employer, say, subcontractor, I am the builder, but there are a lot of employers involved here because there are subcontractors who have employees working on my job sites. This is what is so hard to define is who is responsible. But if, say, a roofing contractor has got somebody up there and he does not have the lanyards on, then not only the roofing contractor is responsible, but I could be responsible. You know, I cannot be—normally I have got six, seven houses going at one time, and I cannot be on every job to make sure that that subcontractor is having his employees perform this task in a safe manner.

I can require, in fact, I always do, if I have got an open stairway or an open overlook or something like that, I build a rail there to

make sure nobody would fall down. But what happens practically every house, when the sheetrock person comes in, he cannot get his sheetrock up a big stairway, see, so he takes it down. I go by that evening, well, here it is. I have got to put it back together again. He is not going to put it back together but, yet, I could be responsible even though I had put it up and he took it down.

Chairman BOND. What are the real risks you find, I mean, knowing throughout the industry, where do injuries most often occur?

Mr. HUBBARD. In the building industry probably the most is from the fall off the roof. A lot of times, I will tell you, it is not because of a safety hazard. It is because a lot of these guys are using something they should not be using. They think they can fly, and it is a fact. I mean, we cannot control what the guy has done. He may be taking some kind of pills or he may have been drinking that morning. You never know what an employee has been doing.

A lot of times it is not a safety hazard, it is a fact that he just was not thinking, and we cannot make people think about what they are doing. No matter how safety-minded we are, we cannot make sure that this guy is not thinking, well, today is Thursday, tomorrow is the last day of the week, and, boy, am I going to have a good time this weekend, and off the roof he goes, you know, that type of thing, so you cannot instill safety in all these people.

Chairman BOND. Well, what can OSHA do to assist in that safety effort? OSHA is supposed to make things safer. What can they do?

Mr. HUBBARD. Well, I agree with Mr. Wheeler that the first time they come out and find a violation, then it should be a reprimand so to speak, but, no, they do not want to do that. I asked them in '92, I said, okay, why do not you make these inspections you are going to make and tell us what we have done wrong. Oh, no, we have got to impose fines and penalties.

Now, they will impose, let us say, a $50,000 penalty or fine, but right off if you will just agree to pay it they will cut it in half for you. If you go to litigation they will cut it by three-fourths, usually, so it is all just, you know, tough to say. We agree with OSHA that extension cords should be grounded properly and that, you know, if it is a real tall steep roof the guys need to have lanyards on. We are not saying we do not want to be safe, but we want to say, let us be sensible.

Right now they have got a 10-inch height. If it is over 10 inches from one floor to the next floor, they want us to have a little rail there. Ten inches. Well, your bathtub, if you step into your bathtub, it is a bigger step than that, and so there are just so many things that are just completely ridiculous about what they are trying to impose. We would just like to see it simplified, and a lot of it really can be taken out of the home-building industry because it just does not apply.

Talk about paperwork, this is a 91-page thing here about Fall Protection, and if you go through here and try to disseminate what it means, you would have to be a Philadelphia lawyer because it says, this regulation now does not apply, see Appendix 742 of this act, and this is what applies now. Why do we have to keep all these things that are not applicable now? Why cannot we simplify it and say, this is the way it is? We should be able to put this into a five-

page document, no more than that, to let the roofing company know what they have to do and when they have to do it.

Chairman BOND. I read into the record the regulations that OSHA issued after the tragic case out in Idaho where a couple of passersby jumped into a ditch to save a man's life, and instead of commending the employer and the two Good Samaritans and the employees, OSHA proposed to fine the Good Samaritans because they did not get hardhats on and take other precautionary measures.

OSHA then issued an extensive regulation on how to rescue people, and I read it into the record, and I noticed the blank look on the faces of the people who listened to me read it in the record because you had to sit down and diagram it to find out what it meant, and I hardly think that, if a man is trapped in an underground ditch, you are going to have the time to figure out exactly what that Good Samaritan rescue case means. Let me turn to Ms. Potts——

Mr. ISENBERG. May I make a comment? One thing, the underlying—from what we understand, the underlying purpose of OSHA is to work on the employer. They do nothing to mandate worker responsibility, that they act safely. There are cases, I have a copy of an article here in the paper where a backhoe, either the operator failed to run the thing correctly or the brakes failed and it ran backwards and killed someone in the ditch behind it. What did they do? They fined the employer. The questions were never asked, was the operator careless, and so the paper quoted, and I would be glad to forward the article to your staff, did the OSHA inspector ever ask, was there carelessness on the part of the operator, and I think they need to install safety responsibility in the workers.

Chairman BOND. Ms. Potts, many of the questions or the comments that have come up here today really reflect the working relationship between the regulators and the regulated businesses. Do you find that you have most problems with the regulations, or is it the attitude and the approach of those who represent the federal government?

Ms. POTTS. Well, I feel it is the attitude of the agencies and that we need to have an attitude in a more positive vein to assist the businesses in compliance with the regulations.

Chairman BOND. Another hearing I have had recently, a number of the people said there ought to be an Inspector General or an ombudsman for each agency that could evaluate complaints that citizens had about the work of particular individuals. In other words, like the police department has an internal review, a newspaper has an ombudsman which generally covered, explains why they wrote the story the way they wrote the story, but would you see some kind of review for complaints against bureaucrats being effective? Do you think that would have an impact?

Ms. POTTS. I think it might be helpful, but it is a pervasive attitude throughout the agencies that everything is based on penalties versus being based on a more helpful and assistance-type approach towards, especially towards small businesses. You know, why penalize us? Why not help us do the right thing?

Chairman BOND. Several comments were made today about the multitude of cutoff points and exclusions, and each one is a barrier.

Mr. Wheeler has said have a uniform below–50-employees exclusion. From your experience, if everything clicked in when you hit the 50th or the 51st employee, would not that guarantee in your view a lot of 49-employee businesses?

Ms. POTTS. Right. I think that is exactly right, and also I think there should be some consideration to revenues because that has a definite bearing on your ability to handle the costs that go along with all of the regulations. You know, there are a lot of businesses that have five employees that make probably 10 times some of those that have 50 employees, so I am not sure just the number of employees.

Chairman BOND. But you would recognize it is better for small businesses to have those exclusions——

Ms. POTTS. Yes.

Chairman BOND [continuing]. Would you agree, because I have fought to get exclusions in the law where it really would be difficult, precisely as Mr. Wheeler said, because the economies-of-scale will at certain points allow larger businesses to be able to comply. You do not object to the exclusion process?

Ms. POTTS. Correct, but is that, is the basis on the number of employees what is really helping those businesses, or is it the revenues? It is really the revenues more than it is just the number of employees, you know, to assume that they are making a lot of money because they have 500 employees. We see large businesses that are having a terrible time right now. They are not making any money, so the number of employees I am not sure is always relevant. It may be relevant to some of the regulations, but I do not think it is the only factor that should be considered.

Chairman BOND. Mr. Wheeler, what do you think about Ms. Potts' discussion of the problems and exclusions?

Mr. WHEELER. I think one point that I would like to back up is the aspect of fear. I have had only one run-in with a regulatory agency at all in almost 20 years. It was not OSHA, although I understand that obviously OSHA is the big hit here today. In retail, OSHA is not as big an issue for us. It is confusing, but I have never had an OSHA inspection, we are a low-hazard industry and probably never will have one.

I did have a run-in with the Department of Labor once. I found that there was a very lopsided balance of power between the regulator and myself. This person was, frankly, pleasant, not rude, but this person knew the law inside out. This person began bantering around the possible fines and penalties that I could be exposed to and the possible costs of litigation almost immediately. I was faced with either hiring a lawyer and acknowledging the litigation costs she was quoting me and possibly the fines as well. Because, what she was claiming I had done, I had in fact done.

In the end, the penalty that I received was not severe and the violation was not severe. But thinking back on it I really acquiesced to everything she said, not because I knew she was right but because I was so terribly afraid of those penalties. The ombudsman program would not only provide me a way maybe to, in effect, tattle on someone that is not treating me well, but maybe it also could be a good way to provide the employer with access to quality information. What rights and powers do I have, can I appeal, who can

I go to for information, not necessarily legal representation but just some common sense information from the same source that is representing the interests of the government. I think that would be a good idea. I think it would help a lot.

Chairman BOND. Would you expect that to be government? I think some trade associations and other entities provide that service. Are you a member of associations that might have that expertise?

Mr. WHEELER. I know NASE has an 800 phone-in program that may be pretty effective. My experience has been, and this is an example that people may find odd to compliment, that the IRS in the last five years or so has become much, much better on their 800 number at providing better information and answering the phone quickly. Contrast that to almost every other agency here in town where we have to call a local number. He is not in, can he call you back, or, can she call you back. We are out of that pamphlet, we will have it again in a few weeks.

I think that just using a national clearing house or regional clearing house where people that really know their stuff on that number could help a great deal, whether it was private or federal.

Chairman BOND. Was the issue that the Department of Labor inspector challenged you on one which was clear, or was it a result of a lack of clarity in law or regulation?

Mr. WHEELER. It was clearly a lack of clarity. When all was said and done the investigator told me how to beat it. In other words, what I had not written technically into my job description that would have caused her to turn around and walk out the door, which I then did. I then called back and said, can I send you a copy of this and, in effect, receive your blessing or clearance that I am now in compliance? Nope, you cannot do that. If you are investigated again or an employee challenges, then we will provide you with an opinion at that time, but there was no way to go back to that very same person or agency and say, I think I have done everything you have asked, can you check over my work and say, yes or no. That is maddening, too. It simply adds to the cynicism.

Chairman BOND. I think all of you have given us a lot of good ideas and, really, one of the difficult things to do, number one, is to ensure a helpful attitude so that the job of the representatives of the federal government is either to accomplish the safety or the non-discrimination goals and make sure those are carried out.

As you say, the threat of penalties does get people's attention, but it would seem from what we have heard that providing the information first and holding the penalties back for those who do not comply could move us along in that effort significantly and, secondly, I can appreciate having the burden of the full bottle of regulations, but we have to come up with some unique and some ways I have not figured out right now to measure the total burden when we have to work one law at a time or a series of regulations at a time.

I thank all of you very much for your time and your thought that went into this process. We are most anxious as a result of this hearing to hear any further ideas that come to you as a result of the discussions. If you have further thoughts, or those of you who are in the audience have thoughts, we would welcome your written

comments. They are most helpful in getting us a better idea of how we can do the job ensuring that entrepreneurship remains alive and vital and not stifled in the United States. Thank you very much.

Our second panel is Mr. Jim White, Senior Program Director of the Local Initiatives Support Corporation of Kansas City; Fritz Edmunds, Associate of the Viveros & Barrera, L.C., Westwood, Kansas; Clyde McQueen, President of the Full Employment Council of Kansas City, and Brian Gloe, Chief Financial Office and Co-owner of Rosse Lithographing Company in Kansas City. Let us start off with Mr. White.

STATEMENT OF JAMES M. WHITE, SENIOR PROGRAM DIRECTOR, LOCAL INITIATIVES SUPPORT CORPORATION, KANSAS CITY, MISSOURI

Mr. WHITE. Good day, Mr. Chairman. It is indeed a pleasure to welcome you home and have this opportunity to speak to this issue. My name is Jim White. I am a Senior Program Director for the Local Initiatives Support Corporation and I am here to talk about my experiences with environmental regulations as they affect central city redevelopment.

I work for a national intermediary, a national non-profit corporation that works in about 34 cities of our country and has been responsible for moving about a billion and a half dollars over the last 15 years, mostly to small non-profit neighborhood-based CDCs working in redevelopment in central cities.

Chairman BOND. We are very familiar with the work of LISC and, in another one of my roles, I have an opportunity to work with you closely, and we appreciate your good efforts.

Mr. WHITE. We appreciate your interest and support. It would be fair to say, I think, that in Kansas City and a number of other cities in the last 10 years CDCs have become effective developers of real estate on a small level. They are, in that sense, important small businesses in their communities. It is also fair to say that one of the most difficult, costly and slippery development factors they have had to deal with and control have been the cost of environmental laws and regulations.

I must add quickly that CDCs are community institutions controlled by people who live in the neighborhood and are committed to the community's health. They would not normally compromise public health, but they are also pragmatists who are trying to look for a balance between environmental issues and the struggle to redevelop their communities.

Striking a balance is difficult. As you know, the markets in which CDCs work require subsidy, that is the rents and the sales prices do not support the cost of development. The subsidies are scarce and are becoming scarcer. Therefore it is very important to husband these resources very carefully and to make them do as much work as they can. In every instance that I am aware of in Kansas City in which there has been increased costs associated with environmental issues, the abatement has had to come from Community Development Block Grant Funds. There had to be public sources. Every one of those dollars that gets spent in that way

means another house that cannot be built or an apartment that cannot be rehabilitated or built, so it is an important issue.

Speaking of scarce resources, I am aware the Senate rescissions do not affect CDBG and HOME, and I want to say that I appreciate your support of those programs, Mr. Chairman.

In a small area of Kansas City near the downtown there are six different developments that I have been personally involved with in which environmental regulations blew the development budgets to smithereens. In one case it ran into tens of thousands of dollars. In another case it was almost two million dollars.

No matter how sensible environmental regulations are, they add increased cost to central city redevelopment, and there is some adverse affects to this. The increased costs mean that many developers in the case of looking at choices for location of employment centers, manufacturing, whatever they might be, are going to look to the suburbs, sometimes called "greenfields," when they are contrasting these with central city redevelopment sites sometimes called "brownfields" because either the environmental costs are not knowable or the liability issues scare the developer away or may scare the sources of financing away, the banks.

In addition to creating jobs which are distant from the population which in many cases has the highest unemployment rate and needs the jobs the most, there are other ironic unintended effects such as requiring workers to drive much farther to work, causing increased auto emissions and so forth.

The lack of clarity about what is required leads to inconsistencies. There is a "cover your rear" definition of what is required, and covering your rear in the case of government means spending a lot of money to cover your rear.

There is difficulty getting bank loans whenever the bank is understandably reticent to underwrite risk when liability is not definable. As a result the bank pushes any ambiguity in regulation or law in the direction of abatement, getting rid of the problem because that is the clearest protection against longterm liability. Those costs cannot be borne in the neighborhoods that CDCs work by the market economics, so they must be supported by public resources or not done at all, and that is often the case.

There are several examples which are included in my testimony which give specific instances of how this has worked in terms of the developments I am familiar with. In favor of time, I will just make a number of recommendations that I suggest the Committee might consider as it deliberates this.

In making law and regulation, give guidance which is clear or give clearer authority to local Departments of Health at the state and local level to make judgments and decisions without the threat of liability under federal law. We have removed good judgment and common sense too often with bureaucratic approaches we have taken. I notice that you released a study just a couple of days ago——

Chairman BOND. A NAFTA study.

Mr. WHITE. Right, that reached some of the same conclusions, that we need to bring some responsibility back to the local level and to allow good judgment to prevail done under the scrutiny of public inquiry and awareness so that there is a responsibility for

the action, but allowing people to try to make good judgments in complex decisions.

Another recommendation is to provide reasonable "hold harmless" provisions to lenders and owners from environmental problems not of their own creation, that are historical in nature. If the liability of what happened in the past has transferred to a current owner and they do not know about it, then that liability creates a situation that is untenable, and that has really affected how a lot of development and credit sources think about central city redevelopment.

Make law and regulation whenever possible favor encapsulation over removal. A lot of central city environmental problems fall in the area of hydrocarbons, have to do with oil byproducts or lead, having to do mostly with auto emissions, but other things, and in every case, if encapsulation is an option, it is much more sensible, common sensible, and much cheaper than removal of the product. There are a number of examples that I could point to on that locally.

The biggest issue and one that I want to emphasize as my ending comment is the area of lead-based paint because there are actually regulatory measures which have just recently gone through the comment phase which have been proposed by both EPA and HUD which will require the removal of lead paint as opposed to covering it up as a treatment in many more instances than has been the case in the past. I have been involved in central city redevelopment now, as I grow older, almost 25 years, and this is an area that has been confused and troubled for 25 years. The regulatory requirements have gone back and forth from you simply having to scrape and paint it a couple of times with good coats of paint, to solutions which are either somewhat ridiculously expensive.

This solution, if allowed to stand, I think will be an unmitigated disaster. It will cause the bulldozing of large numbers of structures in the older parts of the city north of 95th Street in Kansas City, Missouri, because the market economics, if required to do that level of abatement, will not be supported by increases in value in lots of instances in lots of neighborhoods, so that is an issue that is before the Congress at the present time and one that I think is terribly important.

One of the ironies, and I want to make this point also, is that much of what I am talking about in terms of environmental regulation applies only where government dollars are involved in one way or another. Ninety-eight percent of real estate is owned by the private sector, and these issues do not apply because there is a hear-no-evil, see-no-evil system that operates, and everybody understands that the cost associated is not in their interest in the moving of real estate to bring them up.

I think that the dollars that would be spent in enforcement of this kind of removal of lead paint would be better spent in a public education program which tries to make people, especially parents, because the danger is children ingesting lead paint products, aware of the danger, and the same for asbestos. There is lots of asbestos in old houses in Kansas City that are being sold. There is a hear-no-evil, see-no-evil approach in how the real estate market works.

So I urge that you work to revise the proposed lead-based paint regulations in a manner which would use low-cost methods of encapsulation as the primary form of abatement. Require any home using federal funds, or for that matter, any apartment, to be posted with a notice warning about lead paint dangers and instructing parents not to let their kids eat paint.

A lot of cost of environmental remediation could be included in the depreciable basis for the low income housing tax credit. That is a somewhat technical issue, but one that would allow some of the cost associated with remediation to be borne by the investors making use of the tax credit.

Finally, as a general statement, I would urge that you review the thresholds of what is considered necessary abatement to determine they are reasonable in terms of risk and, as a general final comment, let us reinfuse the application of law with the good judgment and personal responsibility of individuals serving the common good. Give some authority and responsibility to the dedicated public servants. When they make their best good faith effort and use good judgment, let us support them.

[The prepared statement of Mr. White follows:]

Testimony of

James M. White
Senior Program Director
Local Initiatives Support Corporation

Good day, Mr. Chairman, and Committee members. It is indeed a pleasure to welcome you to the heart of the nation with your able leader, the distinguished Senator from Missouri. My name is Jim White. I am a Senior Program Director here in Kansas City for the Local Initiatives Support Corporation. I am here to talk about my experiences with the problems created by environmental regulations in central city redevelopment. I appreciate the opportunity.

LISC is a national, non profit organization funded by the private sector to provide technical assistance and funding support to community development corporations (CDCs). In 15 years working with 34 local programs in U.S. cities, we have raised over $1.5 billion, 97% of which has come from 1400 corporations and foundations. We have used these funds to help 1,378 CDCs develop 57,635 housing units and 9.6 million square feet or retail, industrial and other commercial facilities. We provided $278 million in grants, loans and investments to CDCs in 1994 alone.

LISC has been in Kansas City since 1983. National LISC funding commitments of $5.3mm in grants and loans have leveraged funding from local corporations and foundations of $1.5mm in grants, $1.5mm in loans and $24mm in equity investments. Using these funds along with consistent City support and loans from local banks and the Missouri Housing Development Commission, CDCs have produced 1,000 units of multi-family housing since 1987 representing $60,000,000 of reinvestment in distressed neighborhoods. They are also producing new, single-family for sale housing at the rate of 70 units, about $6,000,000 in reinvestment a year. Nobody knew three years ago when we began this process if there would be buyers. I am happy to report the market has exploded and families are buying these houses as fast as they can be built.

It is fair to say, I think, local CDCs in the last 10 years have developed notable capacity in real estate development. They are, in one sense, viable and important small businesses in their communities. It is also fair to say one of the most difficult, costly and, most important, slippery development factors to control has been cost increases associated with environmental laws and regulations.

I must quickly add that CDCs are community institutions, controlled by people who live in the neighborhood, and committed to the community's health in all facets. They will not knowingly compromise public health. But they are also pragmatic institutions, run by people who see the need to balance environmental issues with those of rebuilding their communities.

Striking a balance is difficult. As you know, the markets in which CDCs work require subsidy; i.e., the rents and sales prices do not support the cost of development. These subsidies are a scarce resource and are getting scarcer. Therefore, it is important to husband them very carefully. In every instance of environmentally-driven changes to various projects with which I am familiar in Kansas City the increased cost associated with environmental abatement has been paid for by CDBG funds. This means other develoments, other new homes or affordable apartments, could not be built because funds were required to go to environmental abatement.

Also, speaking of scarce resources, I am aware the Senate recissions do not affect CDBG and HOME. Thank you, Mr. Chairman, for your support of these important programs.

Finally, I have heard from my colleagues all over the country. This are of environmental regulation is problematic and in need of clarification, simplification and common sense. I hope you can bring these to bear.

Environmental Requirements are Costly and Hard to define

I have been personally involved in 6 developments in a relatively small area of central Kansas City in which the projected development cost was

blown to smithereens either significantly or entirely by costs associated with environmental remediation. This ran all the way from a few ten thousands of dollars to $2mm.

> **EXAMPLE** - There was the Nottingham back when the law was new, about 1988. The bank put in a haphazard sentence saying "check on environmental issues" in the original commitment letter. A week before construction was to begin Westside Housing Organization, a local CDC, had a hole drilled with the monumental bad fortune to find a spot where someone had changed their oil. This discovery led to a series of questions practically impossible to answer. Was the oil in the water table? Had it polluted soils underneath residents and businesses downstream, in this case meaning, farther on down the block? How would you abate oil underneath a house two blocks away? Who had the authority to say? This latter issue is the most troubling because the question of who has the authority to say "Do this and it's solved; you can move on with your redevelopment," has been hard to figure out. Also, the undetermined liability was a very difficult aspect of this case to control. The bank was understandably scared silly of assuming a liability for oil leakage downstream. In this case, common sense prevailed and a simple encapsulation process was permitted. It has not gotten better since then.

No matter how sensible environmental requirements are they raise the cost of central city development significantly. In every instance significant costs must be borne to make an environmental analysis. If there is any problem detected in the initial phase, then more costs are required to extend the scope of analysis. To the degree problems are found there is often a set of very difficult questions which must be answered to determine liability issues.

These increased costs work to the detriment of central city redevelopment. While the work I am talking about has to do with residential redevelopment it is even more applicable to vacated manufacturing sites. Costly environmental remediation assures that in a choice between suburban agricultural land, sometimes called

"greenfields," and central city land, sometimes called "brownfields", with either expensive or undefined environmental costs, the choice for a new factory will be in the suburbs, far distant from the central city's unemployed. In addition to creating jobs distant from the population most in need of them this also has the unintended and ironic effect of creating more pollution from auto emissions of workers travelling longer distances to get to work.

Lack of clarity about what is required leads to

- **inconsistencies**
- **a "cover your rear" definition of what's required which leads to spending whatever amount of money is necessary to cover your rear**
- **difficulty getting bank loans**

Banks are understandably reticent to underwrite risk when liability is not definable. As a result the bank pushes ambiguity in the direction of abatement, escalating costs up. These costs cannot be borne by market economics so must be borne by the public, further using scarce subsidy resources to solve problems which sometimes are not problems. If we want lenders to operate in the central City we must give them reasonable protection from liability deriving from historic uses of property.

> **EXAMPLE** - in one instance lead contaminated soils were discovered on a development site. The initial demand by the bank's legal counsel was to have all lead soils removed. This was based on ambiguity in the legal requirements leading to liability exposure on the part of the bank. The solution, thus, was to remove it. This would have added $1mm in unavailable dollars to a very precarious project. After extensive and expensive delays an agreement was finally reached with the State Department of Natural Resources and the City's Health Department allowing encapsulation of the leaded soils.
>
> **EXAMPLE**...In another instance, the construction of a health center, the project was delayed 8 months and $200,000 in added costs were incurred because of lead contaminated soils. The bank was concerned over long term liability issues. The final resolution of

this was to leave the land in the name of the City and lease it to the non-profit health center, thereby keeping liability issues attached to the City.

In both of these examples the issue was lead content in the soils. Pollution of groundwater was not an issue so the only public health concern was the danger of ingestion. Clearly, covering the existing soils with 6" of clean dirt is the logical solution but one which was not clearly allowed by existing law and regulation.

EXAMPLE..in one instance, tanks from a filling station were being removed and the on-site engineer noticed the soils underneath looked unusual. A reading determined they were full of lead. The lead, it turned out, was slag, a by-product of smelting. It had been brought to the site sometime in the 1930's as a fill material valued for its stability. Everyone at this point went crazy; no one knew what to do even though the solution was obvious: bring in some good soil and cover up the hole. That site, slated for new construction at the time, is a vacant lot today. Also, in this instance, a bank which had been committed to making a loan pulled out of the deal and could not be replaced.

EXAMPLE...in another instance a developer received a whole city block from the City free as an inducement to development. In fact, the block had a negative value of almost $2,000,000, a truth not determined until environmental problems were found and added up. Had these costs been known before the development process moved forward, the best public choice would have been cover the site with good dirt and grass, creating a park and saving a precious $2mm for positive use.

Recommendation #1 - make the law and regulations give guidance which is clear <u>or</u> give clearer authority to local Departments of Health to make judgments and decisions without the threat of liability under federal law.

Recommendation #2 - Provide reasonable "hold harmless"

protection to lenders and owners from environmental problems not of their own creation.

Recommendation #3 - make law and regulation whenever possible favor encapsulation over removal.

> **EXAMPLE**...in one rehab case environmental inspections found asbestos content in kitchen tiles. The logical treatment of this was to cover the tile with plywood, thereby encapsulating it, and laying new linoleum over the top. The requirement determined as necessary by legal review of federal law and negotiations with the Health Department of the City was removal of the tiles by licensed asbestos contractors, a very expensive process.

LEAD-BASED PAINT

The best example of the value of encapsulation over removal is lead-based paint. In the 25 years I have been involved in central city redevelopment this issue has remained confused, requirements ebbing back and forth between painting over old paint and a variety of other, from moderately to ridiculously, expensive treatments. Recently, HUD and EPA have issued regulations for comment which require, in many cases, removal of lead based paint. If these proposed regulations are allowed to stand and are generally enforced it will be an unmitigated disaster. In KC we will have to bulldoze lots of buildings older than 1978, large areas of the city north of 95th Street, because the increased costs associated with abatement, which would now include a new army of licensed inspectors and abatement contractors, cannot be borne by the market. This is the death of common sense. There is only one logical way to treat lead-based paint, in my judgment, and that is to scrape the old paint and paint over it with two coats of paint.

One of the ironies of this discussion about environmental regulation is that the private market, which owns 98% of the real estate, carries on its business paying no attention at all to these matters. It is a "see no evil, hear no evil" approach even though there are many instances of peeling, leaded paint in units occupied by children. I believe costs which will be created by the proposed regulations would be better spent in a public

education program about lead paint and how parents can protect their children from it. Public education to encourage responsible parenting around leaf-safeness is a sane approach.

Recommendation #4 - I urge you to revise the proposed lead-based paint regulations in a manner which would use low-cost methods of encapsulation as the primary form of abatement.

Recommendation #5 - Require any home involving any use of federal funds to be posted with a notice warning of lead paint dangers and instructing parents not to let their children eat paint.

Recommendation #6....allow costs of environmental remediation to be included in the depreciable basis under the low income tax credit so that some of the extraordinary costs can be financed by investors.

While it is not the direct responsibility of this Committee, I would urge you to encourage your comrades on the Finance Committee to consider this idea since it would allow a substantial part of the costs associated with environmental remediation to be funded from Low Income Housing Tax credits. This should include such tasks as tank removal and soil remediation and removal, any site related work driven by environmental law or regulation.

Recommendation #7 - review the thresholds of what is considered necessary abatement to determine they are reasonable in terms of the risk. The minimum standard for lead soils, for example, is 50 parts per million. I am told a child would have to ingest a pound of dirt a week over three months to reach a serious level.

We want to protect children from this poison but we also want to use common sense in determining when the risk is real.

Recommendation #8 - let's reinfuse the application of law with the good judgment and personal responsibility of individuals

serving the common good.

In the words of EPA administrator Carol Browner, there are "really serious problems" with environmental regulation. There is a requirement, says Phillip K. Howard in the *Death of Common Sense,* that before old industrial land can be used it must be cleaned up to almost perfect purity, a requirement which assures in instance after instance that the land will sit unused in favor of suburban locations. Instead of 17 volumes of rules and regulations for the environment we need a process which allows individuals, entrusted with the public good and operating under the clear light of public process, to make reasoned judgments and move on them. This should replace the bureaucratic logjam which now holds us prisoner. And as long as it is done under the glare of public scrutiny, then we should protect individuals from liability arising out of unforeseen or unforeseeable consequences.

Mr. Chairman, that concludes my remarks. Thank you. I would be happy to try and answer any questions.

Chairman BOND. That is basically what we are trying to do in this Regulatory Reform effort. Mr. Edmunds.

STATEMENT OF FRITZ EDMUNDS, ASSOCIATE, VIVEROS & BARRERA, L.C., WESTWOOD, KANSAS

Mr. EDMUNDS. Mr. Chairman, thank you for the opportunity to testify today. My name is Fritz Edmunds, Jr. I am an attorney practicing law here in Kansas City. I am a board member on the United States Architectural and Transportation Barriers Compliance Board also known as the Access Board; however, I want to make it clear that my testimony here today does not constitute government business and is strictly a reflection of my personal views and experience.

The Americans with Disabilities Act, the ADA, has effectively raised awareness of the particular challenges of the more than 30 million Americans who are considered disabled in some way, but the ADA regulations and guidelines propounded by the various government agencies have caused widespread confusion, unreasonable burdens and animosity within the business community and elsewhere.

The confusion begins with vague language in the ADA. Terms such as "reasonable," "readily accessible," "undue burden," and "readily available" are difficult if not impossible to define. The task becomes even more arduous when attempting to delineate rules for every situation. Moreover, there are different standards for different titles and sections within the Act.

An illustration of the confusion in the public sector is the fact that one of the rulemaking and enforcement agencies, The Access Board, has distributed over 48,000 packets of information, 66,000 copies of guidelines, and received over 70,000 phone calls for assistance with compliance to the regulations.

Further confusion arises because there are several sources of regulation. The United States Department of Justice publishes guidelines for facilities compliance, and the United States Equal Employment Opportunity Commission has published "Guidance" for compliance with employment accommodation. But when an employer seeks a determination from the EEOC as to what exactly is "reasonable accommodation," the agency responds that such a determination is made on a case-by-case basis. However, that very same agency then has the authority to turn around and file suit against the employer after the EEOC has offered no definitive answers as to what would constitute compliance.

The rulemaking and adjudicatory functions performed by the agencies charged with enforcement of the ADA are given overwhelming deference. So much deference that when an employer's employment practices are questioned by an individual invoking the power and nearly unlimited resources of a government agency, the employer bears the burden of proving that their accommodation is reasonable when, instead, the agency should be required to prove that the practices are unreasonable.

But when there is a legal dispute, the agency rules are presumed to be the minimum requirement for reasonableness, even though the rules were made based on averages and not for the specific situation. If the employer wishes to rebut the presumption, they must

show, pursuant to the Administrative Procedures Act that the agency rules are arbitrary and capricious, an extremely heavy legal burden.

The potential costs of litigation in these issues holds employers hostage as they fear legal fees and penalties in addition to the costs of compliance. The end result is that there is no legal precedent against which to make a determination before attempting to comply, and there is no gauge of whether the attempts at compliance will be seen as satisfactory by the agency charged with enforcement. As one large employer put it, "I can't really afford to spend the money for compliance, and I definitely can't afford to spend the money on the wrong things when I try to comply."

An excessive proportion of the costs for accessibility is placed on businesses in the private sector. I found it interesting that when promulgating the Americans with Disabilities Accessibility Guidelines, the agency in charge chose to address facilities owned by the private sector before addressing state and local facilities or federal facilities. But for either private or public facilities the guidelines require more than just reasonableness, and they go beyond providing minimum standards.

The formal rulemaking process allows for comment, but not many average citizens subscribe to the Federal Register, and most probably do not even know when proposed rules affecting them are published or even how to obtain a copy of the Federal Register.

The board responsible for promulgating the Accessibility Guidelines is by no means impartial, and its members are generally not experienced lawmakers and are definitely not held accountable.

Over half the Access Board is required by statute to be appointed from the general population, and at least half of those members must be persons with disabilities. In reality, though, the members of the Board who are disabled or closely involved with disabled people total over 50 percent, and a high percentage of the staff are also persons with disabilities.

The intent is to utilize perspectives of representatives who experience daily the varied challenges of different disabilities. However, as outlined in *Carter* v. *Carter Coal Co.,* an administrative law case dating way back in 1936, it is improper to delegate authority to make laws to members of the private sector who are specifically benefitted by those same laws. It is understandable how a deaf person, for example, would want their text telephones paid for by a third party, but that does not necessarily mean it is reasonable. The point is, for those who have a vested personal interest in the result it is very difficult to remain impartial.

When an administrative agency is charged with rulemaking, they become, in essence, a legislative body. Often inexperienced in making laws, the members overreach and tend to provide too much government. Because they do not see the economical consequences, they just keep implementing everything they believe to be a good idea without regard to cost. Accessibility for the disabled is an emotionally charged issue, and one for which prioritized choices must be made. When those making the rules are not held accountable to the electorate, there are virtually no checks and balances. The result is an unreasonable shift of the burden to be shouldered by business.

I would like to just share a few examples of agency action that is unreasonable and I believe shocking to the senses. The U.S. Department of Justice filed formal action against a Bar review company which provides classes to train people on how to take the Bar examination in different states. The Justice Department required the company to provide sign language interpreters to any hearing-impaired person who requested one. Even though the company offered to provide written transcripts of the lectures, the Justice Department maintained that providing and paying for sign language interpreters was not an undue burden. The tuition for the class is approximately $900, and the cost of providing sign language interpreters was approximately $10,000, yet the Justice Department required the company to pay for all interpreters plus a $50,000 fine.

The Equal Employment Opportunity Commission pursued formal action against a nationwide employer small business even though there were no complaints filed with the agency. The Access Board previously contemplated requiring refrigerator freezers that were not commercially available but would serve the same function as a side-by-side refrigerator for all accessible government housing.

The same agency has issued a proposed rule requiring state and local judicial facilities to install permanent hard-wired assistive listening devices in every new courtroom, when a portable unit could provide the same access, utilize emerging technology, and be much more cost efficient, especially because the portable units will be required for judges chambers and meeting rooms in the same building.

And the same agency is considering rules requiring all playground slides to be wheelchair accessible, because sliding is a fundamental right for all children.

About to be accepted by the Department of Justice and incorporated into their regulations is a requirement that wherever public telephone is provided, it must be a telephone with a keyboard for the hearing-impaired, unless a bank of phones is required, and then only one must be a text phone. But a minimum requirement for accessibility would be to require a port or a jack in public phones into which a text telephone could be plugged.

Likewise where drinking fountains are provided they must be low enough for people using wheel chairs but high enough for people who have trouble with bending or stooping. These are just a few of the unreasonable results of agency regulations. There are many more.

Just one example of the abuses the ADA regulations can promote is illustrated by the student requiring a company to provide interpreters for classes the company offers because the student is hearing-impaired, but when the company asked the referring employer to share in the cost, the student can all of a sudden hear much better and successfully completes the course without the aid of interpreters.

I know that when I go into public places people are anxious to help me, sometimes too much, but when a business owner has to comply with excessive regulations, he sees people with disabilities as a representative culprit and holds a grudge. It is a situation akin to the absurd quotas of Affirmative Action, which has caused

increased dissension among minorities and employers because the agency regulations were unreasonable.

When a business looks at placing or relocating its offices or headquarters, onerous agency regulations often make it more cost prohibitive to renovate an older building in the urban core than it is to build a new one, so they join the inner city flight. In either case, the costs of compliance with agency regulations can be oppressive. The limitation of alternatives causes frustration and animosity often focused rightly or wrongly on the people the ADA was intending to help.

The problem is although the ADA has done some great things for many people, the agencies charged with making the specific laws for compliance with the big picture are overstepping and overregulating as federal agencies are known to do. They have overregulated so much that some of the original drafters and supporters of the Act are amazed at what agencies have done.

The solution is twofold. First we must promote responsibility for one's own wellbeing. Notice I did not say own welfare. Second, Congress must take a more active role in the promulgation of regulations for compliance with its own acts.

I have never understood why people rely so heavily on our government for solutions to their problems. People with disabilities have to take some responsibility for themselves and their own situations. If not, we will promote dependence on the third parties much like our welfare system has done. We have an obligation in this country to take care of people who cannot take care of themselves, not those who will not.

Congress is able to delegate its authority to create legislation to the Executive Branch through a Constitutionally valid doctrine known as the "delegation of powers." Fortunately, the House has recently passed the Regulatory Reform Bills as a means of reigning in the out-of-control agencies. You have the opportunity to do the same in the Senate. I urge you to pass any legislation that allows Congress to return the normal checks and balances that our system of government requires.

I do not advocate a radical dissolution of the agencies altogether. They do vitally important work providing information and expertise, which allows Congress to draft legislation more efficiently, but the role of the agency should be controlled to return enforcement to the courts and return the lawmaking function to those ultimately held accountable by the voters. I have never understood why Congress could not or would not take a more aggressive role controlling the powers they delegate.

Please exercise the control inherent to Congress and remove the expansive rulemaking and adjudication powers from the out-of-touch and nearly inaccessible federal agencies. Thank you.

Chairman BOND. Thank you very much Mr. Edmunds. It is certainly something that we have tried to do, as I set out earlier. Let me turn now to Mr. McQueen.

STATEMENT OF CLYDE McQUEEN, PRESIDENT, FULL EMPLOYMENT COUNCIL, KANSAS CITY, MISSOURI

Mr. MCQUEEN. Good morning, Senator. My name is Clyde McQueen, and I am President of the Full Employment Council of

Kansas City, Missouri. The FEC is a private non-profit organization whose objective is to provide job training that leads to employment for the economically disadvantaged, unemployed, dislocated workers and youth within the city of Kansas City, Missouri, and the surrounding areas of Jackson, Cass, Clay, Platte and Ray Counties. FEC has a budget of approximately $15 million and receives funds from the federal government, the city of Kansas City, Missouri, state of Missouri, and local contributions from corporate and foundation funders. The Full Employment Council on an average serves 4,000 persons annually through direct services and its subcontractors. Approximately 2,500 of those persons served are youth between the ages of 14 through 21.

The employment of youth has been of particular importance in the metropolitan Kansas City area. There have been many locally funded philanthropic and city-sponsored initiatives to provide youth employment. In the summer of 1992 the private sector, city of Kansas City, Missouri, and non-profit sector raised over $1 million to fund wages for over 1100 youth to work in not-for-profit organizations and units of government. You also were very involved with that effort, and we appreciate your support. Since that time, the foundation and corporate communities of Kansas City have raised an average of $300,000 annually to fund wages for youth jobs.

In addition to the funding of youth wages in non-profit organizations by our local contributors, the Civic Council of Greater Kansas City also funds staff positions to develop jobs for youth in the private sector, regardless of income. Most of the unsubsidized jobs developed within the private sector require youth to be at least 16 years of age.

In the summers of 1993 and 1994 approximately 1800 jobs were generated by our private sector funded efforts. Of the 1800 jobs developed, 1200 were direct unsubsidized jobs in the private sector. At least 98 percent of those persons placed were 16 years of age or older. Of the 600 jobs that were subsidized by the private sector contributions in the non-profit sector, 95 percent were 14 and 15 years of age, with others being served having special needs.

In the programs funded by the II–B summer youth program funded through the U.S. Department of Labor in 1992 and 1993, 3,228 youth were hired. 1,943, or 60 percent, of those youth were between the ages of 14 and 15.

Understandably, the issue of liability restricts the private sector program in terms of who employers will hire. In our job development efforts employers have expressed their unwillingness to hire 14- and 15-year-old youth due to the high potential of child labor law infractions. In particular, limitation of the number of hours a 14- and 15-year-old youth can work is a discouragement to hiring these youth. I acknowledge the limitation of hours worked during the school year is appropriate. Fourteen and 15-year-old youth should focus on their education when school is in session. However, during the summer months I feel it is important that a 14- or 15-year-old youth be allowed to work up to the maximum of 40 hours if they are so inclined. We should encourage youth to work if they want and not pose artificial barriers to these desires.

The City of Kansas City provides us $300,000 annually to fund a reverse commute transportation system taking workers from the urban core of the city to jobs in the suburbs. One particular employer we service, and especially during the summer, is Worlds of Fun/Oceans of Fun, owned and operated by Hunt Midwest Corporation. FEC transports up to 10 percent of this labor force of 3,000 to and from work. Worlds of Fun is the largest employer of youth in Kansas City. It not only provides jobs but also educational scholarships to the youth as a part of a job incentive program.

Worlds of Fun previously employed 14- and 15-year-old youth in very large numbers until approximately two years ago. A couple of instances with 14- and 15-year-olds wanting to work longer hours than allowed created a potential liability under the child labor law regulations. Youth working in the theme park wanted to work more hours than allowable and would quite often volunteer to work when additional shift time was needed. However, this became a large administrative problem determining who was too young to work the additional time. Worlds of Fun was exposed to potential fines due to the overzealousness of young people wanting to work. To eliminate the potential liability they decided not to hire 14- and 15-year-olds.

This has not only been the case in Worlds of Fun, but there was also a newspaper article a couple of years ago about Silver Dollar City in Branson with the same problem. This has been the response of many employers including fast food restaurants, hotels and other small business establishments as the potential exposure, risk and bad press associated with child labor law infractions far outweigh the good of employing young 14- and 15-year-old youth. It is vital, especially during the summer for 14- and 15-year-old youth to be given the opportunity to work as they are often eager and willing to work and most impressionable at this time.

Presently the FEC has over 2,000 applications of youth seeking summer employment. Sixty-five percent of these applications are from youth between the ages of 14- and 15 years of age. This eagerness and desire to work is the reason 14- and 15-year-olds are targeted by gangs, drug runners and undesirable elements in our community.

One of our largest concerns, quite frankly, regarding the elimination of the government funded summer youth program was not the program itself but rather that there is no private sector alternative to hiring 14- and 15-year-old youth under the present regulatory environment. We know the Senate worked with us, and we appreciate your support there, also, Senator.

What better way during the summer months to keep 14- and 15-year-old youth busy than a job, especially if they want to work. We need this population to stay busy, to work and even to get exhausted earning a living while spending their time in a safe and productive environment.

I would recommend the appointment of an advisory group of business, labor and community leaders to consider a summer exemption policy for 145st- and 15-year-old youth as it relates to the number of hours worked up to 40 hours per week, and to also consider other regulatory barriers having an adverse impact on the employment of youth. Such regulatory reform could expand the

number of private sector job opportunities, possibly reducing the need for public sector support, and make available more job opportunities for this population.

Chairman BOND. Thank you very much, Mr. McQueen. I have recently become much more aware of the need to keep 14-year-old youths exhausted and well occupied. I can understand from personal experience precisely what you are talking about. Mr. Gloe.

STATEMENT OF BRIAN GLOE, CHIEF FINANCIAL OFFICER AND CO-OWNER, ROSSE LITHOGRAPHING COMPANY, KANSAS CITY, MISSOURI

Mr. GLOE. Senator, thanks for letting me come here and speak this morning. The following is a description of my experiences with subchapter S corporations, which I think are very desirable, and the alternative minimum tax, which is a heavy burden on small businesses.

Gloe Graphics, Incorporated, doing business as Rosse Lithographing Company, is a privately owned commercial sheetfed printer. In 1988 we had 24 employees and revenues of two million dollars. In 1992 we had 56 employees and $6,250,000 in sales. Since that time we have grown to 80 employees and are currently doing in excess of $10 million in sales. We are at this time one of the three largest sheetfed printers in Kansas City, and yet we are still a very small business compared to many.

In January of 1992 my father, Paul Gloe, the majority shareholder of Rosse Lithographing Company, passed away. This left my mother owning most of the stock in the company and desiring to pass the company on to my brother, the chief operating officer, and myself, the chief financial officer.

My dad bought the company in 1988 from the founder, Leon Rosse. His only asset at the time was a house on which he took out a $150,000 mortgage. With this money he was able to do a highly leveraged acquisition of the printing company. This represented all of my father's net worth and my mother, Dolores Gloe, needed to sell the company to fund her retirement upon his passing.

We hired Ernst & Young and George K. Baum and Associates for fees totaling $28,000 to come up with a buyout plan to help my mother get her value out of the company while navigating through the complicated regulations of the Internal Revenue Service.

They came up with the fair market value for the company, which established the price that my brother, Keith, and I would pay for Mom's stock. Then they came up with a buyout plan that would enable us to purchase my mother's stock without causing the dissolution of the company or weakening its hard labored force strong financial condition.

The buyout plan involved changing the corporation from its status as a "C" corp to a subschapter "S" corp. The primary advantage of a subchapter S corp is that it eliminates the issue of double taxation for small closely-held businesses such as ours.

The company's finances were very tight, nearly insolvent, when my dad bought the company. Rather than seeking a quick return on his investment or a reasonable salary, Dad reinvested nearly all of the profits the company made back into the company. He wanted

it to grow, and that growth would require internal capital in the form of retained earnings, and borrowings from the bank.

The bank required our retained earnings, as well, as the basis for their loaning us money. This is where the irony begins.

While Dad was alive he kept his earnings in the company to finance the company's growth, but when he died the IRS wanted to tax my mother for dividend income if she was going to take the money out of the company. That is, take some of the retained earnings out of the company. Our retained earnings grew from a negative number during its first year in business in 1988 to nearly $750,000 four years later. When we generated the retained earnings, the company paid income taxes. When my mother tried to take the money out of the company, the IRS tried to tax my father's estate on those same earnings a second time as dividends. This constitutes double taxation.

However, Congress and or the IRS in their wisdom came up with a solution for this problem which faces numerous small closely-held businesses, and the solution is the subchapter S corporation, which allows the distribution of retained earnings from a corporation to the owners of the that corporation without facing the burden of double taxation. Ernst & Young, our CPA firm's plan for us was to change the company from a C corporation to a subchapter S corporation to take advantage of this relief from double taxation. My dad passed away in January of 1992, and we undertook this plan for the buyout the following June.

We toiled for the next six months to meet all of the requirements of this change in corporate structure. This included changing our fiscal year end from September 30th to December 31st. It also required the dissolution and merger of the corporate entity Rosse Lithographing Company with Gloe Graphics, Incorporated. Gloe Graphics was the holding company Dad formed to buy all of the stock of Rosse Lithographing Company at the time he acquired the company. Needless to say, all of this involved a great deal of work to bring these two corporate entities together into one corporation on such fairly short notice.

The corporation Rosse Lithographing Company was dissolved on October 1st after ending its most profitable year. The chief source of those profits were a $425,000 life insurance policy that Dad took out on himself for the company. On December 15th the corporate tax return was due. Because the company was growing and adding new equipment to the tune of $2 million every other year, we had no taxable income. The excess of tax depreciation over book depreciation on our new printing equipment more than offset any earnings we might have. Also, the income, the $425,000 income from the life insurance policy should not have been taxable as the company was the owner and the beneficiary of the policy.

Ernst & Young met with us to go over our tax return and the buyout plan during the first week of December of 1992. At that time we found that we had a $125,000 tax bill with the IRS for that year. We were shocked because by all of our calculations we should have owed no taxes. The problem was the alternative minimum tax or AMT. It caused us to pay taxes on the future taxes that we might owe on equipment when the book depreciation would be in excess of the tax depreciation on the equipment we had

added. But what was hardest to bear was that the government was taxing an untaxable benefit, Dad's life insurance proceeds he had provided for the company.

The accountants assured us that we could carry these taxes paid forward and apply them as credits towards future taxes we might owe, but it would require that we abandon our plans to become a subchapter S corporation because these credits would not carry over from the C corp Gloe Graphics to the S corp Gloe Graphics.

This is the greatest iron for us. We stay a C corporation and keep the cumulative alternative minimum tax credit carry forward and have Mom face the burden of double taxation on the transfer of ownership of the company. In this case she would lose half of the value that she would get from the company. Or does the company change to a sub S corporation, avoid the burden of double taxation but lose the AMT tax credits carried forward permanently.

This is our experience with government regulation that I came to share this morning, and I just want to thank you.

Chairman BOND. Thank you very much, Mr. Gloe.

Mr. White, turning to you, a number of the things you have talked about were things that we worked on. Lender liability, I think is very important, we are looking at the lead-base paint problem. We had some opportunity to discuss encapsulation versus removal when we had a place called Times Beach turn up with dioxin. We found two very significant hurdles, and we still face those in other areas. You may call it the NIMBY syndrome, not in my back yard.

First, and the most important is can we be sure that encapsulation is safe? With respect to dioxin, I think views are changing on that, but the decision was not to encapsulate the dioxin. Can there be a truly safe encapsulation of lead paint, and even if there is, how do you sell it because there is a risk there? There is a public perception. Nobody wants to be around a hazardous material, even if it is encapsulated. Are you concerned about how that can be explained to the people who might live in that area?

Mr. WHITE. I think it is important to remember that most of the issues that I spoke about were triggered by involvement of local government and federal or local funds in that most of the danger that is represented by lead paint to children in Kansas City, Missouri, is property in poor condition that is in private hands, so I am sure that there are children being exposed to lead paint contamination in older buildings which need rehabilitation, but that is not being addressed by any of the things that we are talking about.

Certainly we need to address that, and the proposed regulations, if they were enforced generally across our society, would probably take care of the problem, but at the cost of several billions, perhaps trillions of dollars in the construction of housing. The proportionality does not make any sense. The common sense issue to me is that ingestion is the problem that lead paint represents for a child, and the best intervenor and suggestion is good parenting. We should have good public education programs, both for asbestos and for lead paint, and I do not think we particularly have good public education programs, so the 98 percent in private hands is still exposed at risk, and that which would involve governmental, at this

point, is extremely expensive and detrimental to wise use of limited resources.

I do not have a solution except to say common sense and good parenting. Make sure that your children do not eat lead paint, and we should try in rehabilitation processes to make sure that it is encapsulated and properly scraped and covered with two coats of paint, but to me that is common sense. A child who is ingesting paint at this point in an apartment somewhere in our city, that child is at risk in many more different ways than just the ingestion of paint because of the lack of supervision from a parent of the child, and I do not have a solution for that, but it is just that lead paint. It is any number of areas.

Chairman BOND. I recently had an opportunity to read the lead paint instructions for tenants, and there were pages more narrowly spaced than this. I think it was five to six pages, and the thought occurred to me as I was about the second or third page that I sincerely doubted that many tenants were going to read those detailed instructions. I think that is part of it, but I believe we have had some very good ideas, and a number of the things that we are working on.

Let me turn to Mr. Edmunds. Did I gather that you would say that there is a need for a legislative revision of the basic ADA law?

Mr. EDMUNDS. Absolutely. The agencies that promulgate these rules are not unbiased, and I understand that is going to be a large task, but maybe it is better done in a subcommittee or something like that. There is somewhat of an effort now, I guess, of trying to do what they call an ADAAG revision to try and get one source of guidelines for facilities, but the employment side of ADA has gone overboard. There is no way to know what you have to do to comply.

Chairman BOND. As an attorney, what directions do you think the re-writing of this law should go? How should you go about changing the law?

Mr. EDMUNDS. Well, it should be minimum standards, not what everyone wants to have provided for them and, like I said, the people who are helping to draft the rules and the guidelines are interested parties, so we need to get more of a reasonableness standard and minimum standards rather than pie in the sky.

Chairman BOND. Would you shift the standards development from the Access Board to another entity?

Mr. EDMUNDS. A bureaucracy?

Chairman BOND. Private or public. Maybe because there are——

Mr. EDMUNDS. The problem comes in when it is a burden set on the employer. You know, all of a sudden people get together in a room and say, well, this is what is reasonable, this is the minimum guidelines, and if an employer can come up with a better way or another way to provide reasonable accommodation.

Chairman BOND. Should it be outcome-based regulations saying that persons must be accommodated, i.e., in the Bar review course, if you can provide the text, you have to accommodate the person, but the agency does not specify how you do it?

Mr. EDMUNDS. Yes, at least that, or maybe even to say that, you know, the accommodations that you provide. It just sounds unreasonable to me to say that if the accommodations cost more than the tuition, it sounds unreasonable to me for businesses.

Chairman BOND. There is supposed to be a reasonable test, but apparently it has not made a great deal of impact there.

Mr. McQueen, I am a little concerned. We all know the original justification for child labor laws. There were lots of abuses of young children. Are you confident that even if you relax those standards outside of the school year or active school sessions that there will not be abuses?

Mr. MCQUEEN. Well, there are two issues of child labor law enforcement. One is on the hour side; one is around equipment. If you notice, I stayed away from the equipment issue because I think there are valid issues around maturity of youth in being around things like saws and power equipment.

Chairman BOND. I have a 14-year-old who will not even touch a rake. Give him a rake or a wheelbarrow and it scares him to death.

Mr. MCQUEEN. And I intentionally have stayed away from the equipment side of it. I am looking basically at the hour side of it, and specifically I am talking about in the summer. I intentionally stayed away from the nine months of the school year, and I think definitely—I tell you, I worked with I would say probably four or five hundred companies, and they just do not want the liability associated. First of all, it is press problem. If getting a child labor law fine shows up in the newspaper, the impact that it has upon your customers' thinking——

Chairman BOND. You are dead meat.

Mr. MCQUEEN [continuing]. You have violated it, that is one major issue, and the second is these young people want to work. I mean, I talked out there at Worlds of Fun, and it is just maddening to try to keep them from working overtime. I mean, they are sitting there in a theme park trying to clock back on, and I think that even with the summer, even with certain industries, a lot of child labor laws issues are based upon something that happened in the garment industry or farms, and I think that if we could even look at certain industries, recreational and others who do not have a lot of heavy equipment around just during the hours of the summer, just lay out some specific guidelines, I mean, they are scared. They hire people to watch people not clock in.

They did a cost benefit analysis, and it is just not worth it, so that is why I suggested that we get together, not only the labor contingent, which is a part of it, but also the community people, because we spend a lot of money in this town during the summer, and I could count up a whole bunch of dollars we spend trying to keep these kids busy, and if they can work, you know, I think we ought to get them tired and let them go home, and that is, quite frankly, what we found. In the private and public sector they have been good workers. We have not had that as an issue.

Chairman BOND. I was thinking about a discussion we had back in '92 and maybe several times subsequent to that. We also had some testimony before the Small Business Committee, I believe it was last week. We were looking at the 8(a) program, and Mr. Josh Smith who serves on the Minority Business Council raised the interesting point with us that 8(a) set-aside contracts have not really been thought through all the way. He said they are very good to help socially disadvantaged, economically disadvantaged business owners get contracts, but maybe society ought to require that they

provide employment and that they locate in and hire their work force from economically and socially disadvantaged areas. When we were talking about the need for employment particularly, and you outlined that in our discussions, I immediately thought of that. Do you think that would be a possible solution to some of the challenges you face in finding employment?

Mr. MCQUEEN. Yes. I think, as a matter of fact, in core community in particular accessibility to employment is one key issue. You know, I mean in this community especially, with 300 miles of square space, the closer to the job the better, but even with that, if you have a job that is next door to where a kid lives, when that kid goes over there, if the employer sees that kid as a potential boogey man or boogey woman because of their age, you are not going to accomplish that, but we have found that when jobs are closer to where people live in this community and if they are in the neighborhood where people live, they are in fact more inclined to work, and that is why we have this reverse commuter program that basically takes people to jobs, and one of the things that does happen we have found is minority business hiring from the areas which they do does have a direct impact on it.

Chairman BOND. We want to work with you on that because there are a lot of other ideas all over the place. In discussing it, it seems to me that this is something that might really begin to deal with the problem that you have expressed, and it seems to be probably one of the most difficult of all challenges we have to face.

Mr. Gloe, very briefly, you talked about the AMT. That is one of the things I think the House Tax Package is working on trying to reform it. We have an S corporation reform measure in the Senate. I am going to have to refer this to our Small Business Committee expert on taxation. Ms. Bracken has come out of the private sector where she was with one of the major accounting firms. I am not sure that I can follow exactly what all of the steps that would need to take to deal with your problem. Let me ask you generally, do you see other problems that taxes, any areas where you see tax inequities or disincentives for small business in the current tax code?

Mr. GLOE. Well, the one that I just mentioned, the real problem is that small businesses need retained earnings. Large corporations need them, but they have a lot more to work with, but in the small business, you need to have the money in the company so that you can go borrow more money if you want it to grow. It is a disincentive to get into business.

If you look at what my mom faced, and we will get through that problem, but the original $150,000 that my dad invested, barely more than that would come back four years later after the taxes got through with it based on the way the system is set up now, and that includes $425,000 life insurance policy that he could have just made my mother the beneficiary of, so you know, with a return of less than you get from only a moderate CD, there is not a big incentive for people to get into business, entrepreneurship, and printing in particular, which is about the third largest employer. Most printers of the 150 that are a member of the local industry association, all but 10 of them are under two million dollars in revenue and under 30 employees. There is no reason to get into that busi-

ness if you can make more money putting money in a bank account, and that is not creating jobs.

Chairman BOND. Have you considered some of the tax law changes that have been proposed? One in particular, Senators Domenici and Nunn have proposed a consumption-based income tax that would say either to businesses or individuals, you are taxed only on the earnings that are not reinvested or any disinvested earnings. In other words, you would get a deduction for reinvestment in the business. There would have to be a steep rate on what is actually consumed or perhaps what is paid out to the shareholders.

Mr. GLOE. Well they used to have something called an investment tax credit, and they abolished that. I do not know how that would affect us. We spend enough time trying to figure out how to survive with the system the way it is now. If it is better than what we have now, that would be great.

Chairman BOND. I think everybody is looking for something that is better than we have now, but that it is a little difficult to make sure that we do not make something worse.

Ladies and gentlemen, thank you very much. I appreciate your time. We regard you as a very valuable resource. We have many questions to follow up on in a lot of these areas. We welcome your continuing contact. I think most of you know Brad Scott, and he is a phone call away if you have ideas or suggestions for further follow-up. We would certainly welcome them. It is most informative for me and for my staff director, Louis Taylor, and a special thanks to Nancy Epple who is responsible for everything except trying to get me here on time today. Nancy, thanks for making all the arrangements. With that, with my sincere thanks, we will call this hearing adjourned. Thank you very much for coming in.

[Whereupon, at 11:01 a.m., the committee was adjourned.]

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